

[Page 1]

1 UNITED STATES DISTRICT COURT
2 SOUTHERN DISTRICT OF NEW YORK

3 -----x
4 FERNANDO HERNANDEZ, KENNETH CHOW,
5 BRYANT WHITE, DAVID WILLIAMS, MARQUIS ACKLIN,
6 CECILIA JACKSON, TERESA JACKSON,
7 MICHAEL LATTIMORE, and JUANY GUZMAN, Each
8 Individually, And On Behalf Of All Other
9 Persons Similarly Situated,

10 Plaintiffs,

11 8 -against- Index No:
12 CV 4339 (ALC) (JLC)

13 9 THE FRESH DIET, INC., LATE NIGHT EXPRESS
14 COURIER SERVICES, INC. (FL), FRESH DIET EXPRESS
15 CORP. (NY), THE FRESH DIET - NY INC. (NY),
16 FRESH DIET GRAB & GO, INC. (FL) a/k/a
17 YS CATERING HOLDINGS, INC. (FL) d/b/a
18 YS CATERING, INC. (FL), FRESH DIET EXPRESS
19 CORP. (FL), SYED HUSSAIN, Individually,
20 JUDAH SCHLOSS, Individually, and ZAIMI DUCHMAN,
21 Individually,

22 14 Defendants.
23 -----x

24 15

25 16

26 17 EXAMINATION BEFORE TRIAL of
27 the Plaintiff, KENNETH CHOW, taken by the
28 Defendant, pursuant to Notice, held at the
29 offices of Kaufman, Dolowich, Voluck & Gonzo
30 LLP, 100 William Street, Suite 215, New York,
31 New York 10038, on September 24, 2013, at
32 9:46 a.m., before a Notary Public of the State
33 of New York.

34 25

[Page 2]

1 APP E A R A N C E S:
 2 THE HARMAN FIRM, PC
 3 Attorney for Plaintiffs
 4 200 West 57th Street, Suite 900
 5 New York, New York 10019
 6 BY: PETER J. ANDREWS, ESQ.
 7
 8 KAUFMAN, DOLOWICH, VOLUCK & GONZO LLP
 9 Attorneys for Defendants
 10 100 William Street, Suite 215
 11 New York, New York 10038
 12 BY: YALE POLLACK, ESQ.
 13 FILE #: 055611-0002
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[Page 4]

1
 2 K E N N E T H C H O W, the witness herein,
 3 having been first duly sworn by a Notary Public
 4 of the State of New York, was examined and
 5 testified as follows:
 6 EXAMINATION BY
 7 MR. POLLACK:
 8 Q. State your name for the record, please.
 9 A. Kenneth Chow.
 10 Q. State your address for the record,
 11 please.
 12 A. 3137 Coney Island Avenue, Brooklyn, New
 13 York 11235.
 14 Q. Good morning, Mr. Chow.
 15 A. Good morning.
 16 Q. My name is Yale Pollack, and I represent
 17 the defendants in this action. Today I'm going
 18 to be asking you a series of questions
 19 concerning your claims in the action.
 20 A. Okay. Yes.
 21 Q. If you don't understand any question
 22 that I ask, just let me know and I'll rephrase
 23 it. Answer all questions verbally because the
 24 court reporter needs to take down the answers.
 25 I'm going to ask you to wait for me to finish

[Page 3]

1
 2
 3
 4 STIPULATION S
 5
 6 IT IS HEREBY STIPULATED AND AGREED by and
 7 between the attorneys for the respective parties
 8 herein, that filing, sealing and certification,
 9 and the same are, hereby waived.
 10
 11 IT IS FURTHER STIPULATED AND AGREED that
 12 all objections except as to the form of the
 13 question, shall be reserved to the time of the
 14 trial.
 15
 16 IT IS FURTHER STIPULATED AND AGREED that
 17 the within deposition may be signed and sworn to
 18 by an officer authorized to administer an oath,
 19 with the same force and effect as if signed and
 20 sworn to before the Court.
 21
 22
 23
 24
 25

[Page 5]

1 K. Chow
 2 the question before answering because the
 3 reporter can't take us both talking at the same
 4 time.
 5 If you need to take a break at any point
 6 during today's deposition, please let me know.
 7 The only request I have with that is that if
 8 there's pending, please answer that question
 9 before asking to take the break.
 10 Do you understand those instructions?
 11 A. Yes.
 12 Q. Are you taking any medications today?
 13 A. No.
 14 Q. Are you under the influence of drugs or
 15 alcohol?
 16 A. No.
 17 Q. Is there anything else that may impair
 18 your ability to truthfully respond to my
 19 questions today?
 20 A. No.
 21 Q. Have you been deposed before?
 22 A. No.
 23 Q. Are you currently employed?
 24 A. Yes.
 25 Q. Who is your employer?

[2] (Pages 2 to 5)

[Page 6]

1 K. Chow
 2 A. MTA.
 3 Q. Where are they?
 4 A. The address they have on my check is at
 5 130 Livingston Street.
 6 Q. Where is that?
 7 A. In Brooklyn, New York 11201.
 8 Q. What do you do for the MTA?
 9 A. I'm currently working as a train
 10 operator.
 11 Q. How long have you been working for the
 12 MTA?
 13 A. This month's going to be my fifth month.
 14 Q. When did you start?
 15 A. I was inducted around April 29th of this
 16 year.
 17 Q. Were you a train operator the whole
 18 time?
 19 A. Yes.
 20 Q. Did you work anywhere else before the
 21 MTA?
 22 A. Yes.
 23 Q. Where?
 24 A. I work for A-1 International SCI.
 25 Q. What is A-1 International SCI?

[Page 8]

1 K. Chow
 2 year through the beginning of September of last
 3 year.
 4 Q. June 2012 to September 2012?
 5 A. Yes.
 6 Q. How did your relationship with A-1 end?
 7 A. End? I just left -- I just left the
 8 job. I felt the pay wasn't right, and I have a
 9 pending litigation against them.
 10 Q. You left voluntarily?
 11 A. Yes.
 12 Q. What'd you do between September 2012 and
 13 April 2013 for income?
 14 MR. ANDREWS: Objection.
 15 You can answer if I object.
 16 It's just for the record.
 17 Do you understand the question?
 18 A. Could you rephrase it again?
 19 Q. Were you employed by anyone between
 20 September 2012 and April 2013?
 21 A. On the side, I was looking for a job as
 22 an unemployed. So it wasn't basically like
 23 full-time job, so I work like in and out, not
 24 every day, just like working like a side job.
 25 Q. What kind of side jobs?

[Page 7]

1 K. Chow
 2 A. It's also like a courier-based company,
 3 deliver mostly computer parts.
 4 Q. What did you do for A-1 International
 5 SCI?
 6 A. Deliveries.
 7 Q. Deliveries of what?
 8 A. A mixture of computer parts, some
 9 Amazon, soap.com, diapers.com.
 10 Q. Were you an employee or an independent
 11 contractor of A-1?
 12 A. Independent contractor.
 13 Q. How were you paid by A-1 International?
 14 A. Weekly.
 15 Q. Weekly?
 16 A. Our tolls reimbursed.
 17 Q. Was it a commission-based structure?
 18 A. It's like commission-based based by
 19 mile, based on distance depending on the vendor
 20 that you deliver.
 21 Q. How long were you working for A-1
 22 International?
 23 A. About three months.
 24 Q. Can you give me those dates?
 25 A. I would say the middle of June of last

[Page 9]

1 K. Chow
 2 A. Small deliveries, flower deliveries.
 3 Q. Who'd you perform flower deliveries for?
 4 A. T. Rena Weddings/Events.
 5 Q. Can you spell that?
 6 A. T, period, R-E-N-A, Weddings/Events.
 7 Q. Were you an employee of T. Rena?
 8 MR. ANDREWS: Objection.
 9 A. I'm sorry. Would you rephrase it?
 10 Q. Were you an employee of T. Rena?
 11 MR. ANDREWS: Objection.
 12 A. Yes, I was an employee.
 13 Q. Before the MTA, you did have other
 14 employment?
 15 A. Yes.
 16 Q. Between the time of A-1 and MTA?
 17 A. Yes.
 18 Q. How were you paid by T. Rena?
 19 A. I was paid by -- by stops.
 20 Q. Was it, again, a commission-based
 21 structure?
 22 MR. ANDREWS: Objection.
 23 A. Yeah, but delivery. It's like \$5 per
 24 delivery.
 25 Q. Anybody else you performed side jobs for

[3] (Pages 6 to 9)

[Page 10]

1 K. Chow
 2 between September 2012 and April 2013?
 3 A. I did like minor small gig for TV shows
 4 as an audience.
 5 Q. What TV show?
 6 A. Jeremy Kyle Show.
 7 Q. Any others?
 8 A. The CBS, The Job.
 9 Q. You got paid for those --
 10 A. Yes.
 11 Q. How'd you get paid?
 12 What was your compensation?
 13 A. Jeremy Kyle, beginning, they were paying
 14 like \$50 for two shows in form of a gift card.
 15 After that, they start reducing it to two shows
 16 but like for \$25 for two shows. That's in the
 17 form of a gift card. The one with CBS, The
 18 Job, they pay \$50 per taping in cash.
 19 Q. This is to be an audience member?
 20 A. Yeah, audience member.
 21 Q. Any other side jobs between
 22 September 2012 and April 2013?
 23 A. Just one day side job for one of the
 24 client. I think it's only like -- I think 120
 25 something dollars for the trial of the work.

[Page 11]

1 K. Chow
 2 Just driving him around city.
 3 Q. Any other jobs you can think of between
 4 that time period, September 2012 and
 5 April 2013?
 6 A. That's all I have.
 7 Q. Did you work with anyone before A-1?
 8 A. Yeah, The Fresh Diet.
 9 Q. Are you married?
 10 A. No.
 11 Q. Were you ever married?
 12 A. No.
 13 Q. Do you have any children?
 14 A. No.
 15 Q. Can you describe your educational
 16 background?
 17 A. Some college, about one and a half
 18 years.
 19 Q. Where?
 20 A. CCNY.
 21 Q. High school diploma?
 22 A. Yes.
 23 Q. From where?
 24 A. Abraham Lincoln High School, 1998.
 25 Q. Did you go to CCNY right after high

[Page 12]

1 K. Chow
 2 school?
 3 A. Yes.
 4 At that time, I was -- at the same time
 5 college, I was employed by the United States
 6 Postal Service, December of '99, and worked
 7 through -- until February of 2006.
 8 Q. What'd you do for the Postal Service?
 9 A. It's vary jobs. I used to be as a
 10 marker clerk, automated marker clerk. Then I
 11 got transferred to a mail processor, then mail
 12 handler, then back to mail processor.
 13 Q. How were you paid by the Postal Service?
 14 A. They paid per hour and a salary.
 15 Q. Can you explain that?
 16 When did you get hourly?
 17 MR. ANDREWS: Objection.
 18 Q. When did you get paid per hour?
 19 A. Bi-weekly, we get paid.
 20 Q. From what years?
 21 A. From 1999, December 1999, to when I
 22 resigned from the job as of February 2006.
 23 Q. You said you were paid hourly and a
 24 salary, correct?
 25 A. Yes.

[Page 13]

1 K. Chow
 2 Q. What was your hourly rate?
 3 A. At that time, I started working -- on
 4 December 1999, my starting pay was 13.50 an
 5 hour.
 6 Q. Did it change during your tenure?
 7 A. Yes. Six year -- my sixth year when I
 8 left, I started -- I ended at around 19.50 an
 9 hour.
 10 Q. What salary did you receive during that
 11 time?
 12 A. They multiplied that by -- to get the
 13 hourly rate, by 2,000. That's how I get the
 14 salary.
 15 Q. Can you explain that?
 16 A. They paid by hour. The salary is based
 17 on the standard 2,080 hours per year.
 18 Q. Do you know what the salary was in 1999?
 19 A. At that time, I wasn't like a full-time
 20 regular. I was like a part-time flexible.
 21 Q. Did you work overtime when you worked
 22 for the Postal Service?
 23 A. Yes.
 24 Q. How do you know you worked overtime?
 25 MR. ANDREWS: Objection.

[4] (Pages 10 to 13)

[Page 14]

1 K. Chow
 2 A. Anything over eight hours or more than
 3 forty hours a week, eight hours a day or more
 4 than forty hours a week.
 5 Q. What were you paid if you worked
 6 overtime?
 7 A. Time and a half.
 8 Q. 13.50 times time and a half?
 9 A. Yes.
 10 And even with union contract, anything
 11 more than ten hours a day is double time, or
 12 more than fifty-six hours a week, double time.
 13 Q. You were part of a union?
 14 A. Yes.
 15 With the exception with mail handler.
 16 Mail handler union still time and a half
 17 because how many hours you work. In the clerk
 18 craft, anything more than ten hours a day or
 19 more than fifty-six hours a week is double pay.
 20 Q. To the best of your recollection, the
 21 terms and conditions of your employment were
 22 governed by a collective bargaining agreement?
 23 MR. ANDREWS: Objection.
 24 A. Correct.
 25 Q. You said you resigned from the Postal

[Page 16]

1 K. Chow
 2 Q. When was that?
 3 A. That's around the same time.
 4 Q. You were working both jobs at the same
 5 time?
 6 MR. ANDREWS: Objection.
 7 A. Yeah, I was operating those business at
 8 the same time.
 9 Q. Were you owners of those businesses?
 10 A. Yes.
 11 Q. Did you have any partners?
 12 A. No, just myself.
 13 Q. What were the names of the businesses?
 14 What was the name of the cruise agency?
 15 A. Cruise Planners.
 16 Q. What about the cell phone?
 17 A. Cell phone is just get my own website.
 18 It's freecellies.com.
 19 Q. Free what?
 20 A. Cellies, C-E-L-L-I-E-S.com.
 21 Q. I think you mentioned maybe a third
 22 business opportunity; is that correct?
 23 A. Yeah. It's like a towel business.
 24 MR. ANDREWS: Towel?
 25 THE WITNESS: Yes.

[Page 15]

1 K. Chow
 2 Service?
 3 A. Yes. I voluntarily resigned.
 4 Q. What'd you do after that?
 5 A. After that, I was like searching for
 6 small business opportunities.
 7 Q. Did you find any?
 8 A. I found three, but three weren't
 9 successful as I thought I was expecting.
 10 Q. What'd you do for work between the time
 11 you resigned from the Postal Service and
 12 started working with The Fresh Diet?
 13 MR. ANDREWS: Objection.
 14 A. At the beginning, I first found a cruise
 15 agency, like a franchise.
 16 Q. What'd you do for the cruise agency?
 17 A. Like a franchisee selling cruises.
 18 Q. When did you do that?
 19 A. That should be around like March of 2006
 20 until they terminate contract is around May of
 21 2009.
 22 Q. What other opportunities were you
 23 involved with?
 24 A. Cell phone -- phone line, cell phone
 25 business.

[Page 17]

1 K. Chow
 2 Q. When did you work in the towel business?
 3 A. It's about the same time too.
 4 Q. Were you performing all three jobs
 5 between March 2006 and May 2009?
 6 MR. ANDREWS: Objection.
 7 A. Except for those two. Those two I
 8 didn't make no money. I just like let it go as
 9 of -- as I didn't make no money, I said limited
 10 income, and I decide to call off.
 11 MR. ANDREWS: He's asking you
 12 about the dates, if you can recall the
 13 dates.
 14 A. Oh, the cell phone business, I would
 15 say -- I call it off on the business at around,
 16 let's say, 2007.
 17 Q. When you said "those two," which two
 18 were you referring to?
 19 A. The towel -- I was talking about the
 20 cell phone business. The towel, I didn't make
 21 no money, so I call off on the same year.
 22 Q. What was the name of the towel business?
 23 A. Towel business? I don't recall the
 24 website. I have the -- they gave me a website
 25 for my own website. I don't recall it.

[5] (Pages 14 to 17)

[Page 22]

[Page 24]

1 K. Chow
2 Q. What was your hourly rate?
3 A. Actually, it's per day. I'm sorry.
4 It's like \$30 per day.
5 Q. What were you doing with the
6 freecellies.com at that time?
7 A. Oh, we just do advertising, marketing
8 just to get the customer to go website and get
9 free cell phones with a service contract.
10 Q. Is that still an active website?
11 A. Not -- it's active, but no -- no sales,
12 no reported sales activity.
13 Q. When was the last sale?
14 A. Last sale, I would say, is approximately
15 around 2008.
16 Q. Do you own the domain?
17 A. Oh, that domain is gone.
18 Q. Did you buy the domain originally?
19 A. Yes, with the package.
20 Q. When did the towel business stop?
21 A. The same year, 2006.
22 Q. 2006?
23 A. Yes.
24 And that domain is gone too. I could
25 give you a domain name. It was Towel Mania.

1 K. Chow
2 you weren't working on Friday nights?
3 MR. ANDREWS: Objection.
4 A. I was working on Friday nights.
5 Q. When were you covering routes for
6 Mr. Hussain?
7 A. On Friday nights when he takes off.
8 Q. Did he take off every Friday night
9 between November 2008 and January 23, 2009?
10 A. Yes, all the time.
11 Q. I'm showing you a document that's been
12 previously marked as Defendant's Exhibit 13 on
13 September 20, 2013 (handing).
14 I'm going to ask, before today, have you
15 seen that document?
16 MR. ANDREWS: I just want to
17 mention, you do not have to and should
18 not discuss conversations you've had
19 with your attorneys. That's attorney
20 client privileged, but if you can answer
21 questions without disclosing what you
22 discussed with attorneys, you can answer
23 the questions.
24 Do you want the question
25 repeated?

[Page 23]

[Page 25]

1 K. Chow

2 Q. You remember the domain name now?

3 A. Yeah.

4 Q. What happened on January 23, 2009?

5 A. I was given an assignment that reported

6 on Sunday. I reported to the company. I was

7 given an assignment on a manifest.

8 Q. By who?

9 A. By Mr. Syed Hussain.

10 Q. This was different than any of the other

11 days you had been performing work?

12 A. Could you rephrase it again?

13 Q. You said on January 23rd you became

14 full-time, correct?

15 A. Yes.

16 Q. What was different on January 23rd

17 compared to other days you had been performing

18 work?

19 A. Meaning what date?

20 Q. From November 2008 until

21 January 23, 2009.

22 A. Oh, at that time, he gave me like mostly

23 like Friday night work. When he's off on

24 Friday nights, I would cover the route for him.

25 Q. From November 2008 to January 23, 2009,

1 K. Chow
2 A. I don't really understand. Could you
3 rephrase it?
4 Q. Before today, have you seen that
5 document?
6 A. That, I haven't seen it.
7 Q. You have not seen it?
8 A. (Witness shakes head.)
9 Q. You have to give a verbal answer.
10 MR. ANDREWS: You have to say
11 yes or no to the lady.
12 A. No.
13 Q. Do you see your name in the caption of
14 the complaint?
15 A. Yes, I see my name on the caption in the
16 complaint.
17 Q. Is it the second name after
18 Fernando Hernandez?
19 A. Yes, the second name.
20 (Whereupon, Notice of EBT was
21 marked as Defendant's Exhibit 21, for
22 identification, as of this date.)
23 Q. I'm now showing you what's been marked
24 for identification as Defendant's Exhibit 21,
25 and I'm going to ask if you've seen that

[7] (Pages 22 to 25)

[Page 26]

[Page 28]

1 K. Chow
2 document before today (handing).
3 A. I did not see the letter, but I was
4 given a phone call.
5 MR. ANDREWS: Again, you don't
6 have to disclose what you discussed with
7 your attorneys or with people working at
8 our firm.
9 Q. Who were you given a phone call by?
10 MR. ANDREWS: Objection.
11 A. By my attorney.
12 Q. You have not seen Defendant's Exhibit
13 before today?
14 A. No.
15 Q. Did you talk to anyone before today's
16 deposition --
17 MR. ANDREWS: Objection,
18 vagueness.
19 Q. -- in preparation for today's
20 deposition?
21 MR. ANDREWS: Objection.
22 Again, you don't have to
23 disclose what you discussed with
24 attorneys.
25 A. Yes.

1 K. Chow
2 Q. Did he say whose deposition?
3 A. He said he went to Mr. Correa's
4 deposition.
5 Q. Did he tell you what happened at the
6 deposition?
7 A. Yes.
8 Q. What did he tell you happened at the
9 deposition?
10 A. He say go over the questions like you're
11 questioning me right now.
12 Q. Did he give you any instructions as to
13 how to testify today?
14 MR. ANDREWS: Objection.
15 A. That, I do not recall.
16 Q. How long was your conversation with
17 Mr. Hernandez yesterday?
18 A. About ten, fifteen minutes.
19 Q. What time was it?
20 A. Around -- that time, I was about to
21 leave work around 6:00 in the evening.
22 Q. When did you speak with Mr. Correa?
23 A. Correa, I would say last week.
24 Q. Was this in person or over the phone?
25 A. No. It's on Facebook message.

[Page 27]

[Page 29]

1 K. Chow
2 Q. Who did you speak with?
3 A. I spoke to Fernando Hernandez,
4 Juan Correa.
5 Q. Anyone else?
6 A. David Williams, Bryant White, and
7 Teresa Jackson.
8 Q. When did you speak with
9 Fernando Hernandez?
10 A. Yesterday.
11 Q. What did you speak with
12 Mr. Fernando Hernandez about?
13 A. Anything related to the case.
14 MR. ANDREWS: I'm sorry. Was
15 the answer? It did not relate to the
16 case? What was the answer? I didn't
17 hear it. I'm sorry.
18 MR. POLLACK: "Anything related
19 to the case," I believe he said.
20 A. Related to the case itself.
21 Q. Did you call Mr. Hernandez?
22 A. He called me.
23 Q. What did he say?
24 A. He said he went to the deposition last
25 week.

1 K. Chow
2 Q. You have a Facebook account?
3 A. Yes.
4 Q. How long have you had a Facebook
5 account?
6 A. That, I do not recall.
7 Q. You communicated with Mr. Correa over
8 Facebook Messenger?
9 A. Correct.
10 Q. What did you speak with Mr. Correa
11 about?
12 A. About his deposition.
13 Q. What did he tell you about his
14 deposition?
15 A. He didn't say anything about deposition.
16 He just mention mostly about his unemployment
17 situation.
18 Q. What'd he tell you about his
19 unemployment situation?
20 A. That he got a letter that Fresh Diet
21 said that he was fired.
22 Q. Do you know if his deposition had been
23 completed by the time you were speaking?
24 A. That -- no. I don't know his deposition
25 at that time.

[8] (Pages 26 to 29)

1 K. Chow
2 Q. Did you speak with anyone else from
3 The Fresh Diet over Facebook?
4 MR. ANDREWS: Objection.
5 A. Who else? No. Actually -- after that,
6 not really, only with -- the only person I
7 spoke with over the phone, Bryant White and
8 Teresa over the phone and David Williams.
9 Q. You had a ten- to fifteen-minute call
10 with Mr. Hernandez last night, correct?
11 A. Correct.
12 Q. Did you speak about today's deposition
13 with Mr. Hernandez?
14 A. Yes.
15 Q. What did Mr. Hernandez say to you
16 regarding today's deposition?
17 A. He said he would like to come with me
18 and have him sit down with me while I give the
19 deposition.
20 Q. Did he tell you how to answer certain
21 questions that I may ask today?
22 MR. ANDREWS: Objection.
23 A. Yeah, similar questions that you asking
24 me right now.
25 Q. Did he tell you how to answer them?

1 K. Chow
2 recall.
3 Q. Was it over the phone?
4 A. Over the phone.
5 Q. Did you call him, or did he call you?
6 A. He call me first. I didn't pick up.
7 Q. Did he leave a message?
8 A. He left -- I have a one unanswered call,
9 but I call him back.
10 Q. What did you speak about with
11 Mr. Williams?
12 A. He asked me about his deposition day,
13 where's the location. He say he has to find
14 that the -- the location of the -- to give his
15 deposition.
16 Q. Did he discuss your deposition?
17 A. No. No.
18 Q. When did you speak with Bryant White?
19 A. That's also last week too.
20 Q. Was this in person or over the phone?
21 A. Over the phone.
22 Q. Did you call him, or did he call you?
23 A. We were on three-way.
24 Q. With who?
25 A. With Mr. Hernandez.

[Page 31]

1 K. Chow
2 A. No. He just give me what kind of
3 question. He didn't tell me how to answer
4 them.
5 Q. Can you give an example of a question he
6 told you I may ask?
7 A. Similarly asked like with Mr. Correa,
8 are you married, all the beginning stuff, have
9 you ever been married.
10 Q. What else?
11 A. Current address.
12 Q. Anything about hours you may have
13 worked?
14 MR. ANDREWS: Objection.
15 A. No, nothing about hours.
16 Q. Anything about pay you may have
17 received?
18 A. No.
19 Q. Just background information?
20 A. Yeah, just the beginning, background
21 information.
22 Q. When did you speak with David Williams?
23 A. Last week.
24 Q. Do you remember the day?
25 A. I don't know what actual date. I do not

[Page 33]

1 K. Chow

2 **Q.** What did you discuss during that phone

3 call?

4 A. About Mr. White's case.

5 **Q.** Who initiated the call?

6 A. Mr. Hernandez.

7 **Q.** Were all these calls to your cell phone?

8 A. Yeah, through my cell phone.

9 **Q.** What'd you speak about regarding

10 Mr. White's case?

11 A. Well, Mr. White discuss about his

12 Workman's Comp. case.

13 **Q.** Anything about this case?

14 A. We only mention about telling to be

15 prepared for the upcoming deposition.

16 **Q.** How were you to be prepared for the

17 upcoming deposition?

18 A. We called directly with our attorneys.

19 **Q.** When did you speak with Teresa Jackson?

20 A. Last week too.

21 **Q.** Was this in person or over the phone?

22 A. Over the phone.

23 **Q.** Did you call her, or did she call you?

24 A. I call her.

25 Then she call me the next times that --

[Page 34]

1 K. Chow
 2 about her schedule for deposition, that she has
 3 to manage a different schedule date because
 4 herself and her nephew, Marquis Acklin, they
 5 live in the same house, so they don't want a
 6 separate day. They want to go on the same day,
 7 like different -- different sessions because
 8 they have a long commute.

9 Q. Why did you call her?

10 A. Oh, same thing, telling her about -- be
 11 prepared for the deposition.

12 Q. Did you provide any documents to your
 13 attorneys concerning your claims in this
 14 action?

15 A. Yes.

16 (Whereupon, Verification was
 17 marked as Defendant's Exhibit 22, for
 18 identification, as of this date.)

19 Q. I'm now showing you what's been marked
 20 for identification as Defendant's Exhibit 22
 21 (handing).

22 I'm going to ask, before today, have you
 23 seen that document?

24 A. Yeah, I seen it, and I signed it.

25 Q. That is your signature on the document?

[Page 35]

1 K. Chow
 2 A. Yeah, this my signature (indicating).

3 Q. You see where it says that you've read
 4 Plaintiff's responses to Defendant's first set
 5 of interrogatories and Plaintiff's responses to
 6 Defendant's first set of document requests?

7 A. Yes.

8 I read that as well too before I signed
 9 it.

10 Q. You read those documents before you
 11 signed --

12 A. Yes.

13 Q. -- the document marked as Defendant's
 14 Exhibit 22?

15 A. Yes, correct.

16 MR. ANDREWS: Objection.

17 Q. Did you sign this document on
 18 April 2, 2013?

19 A. Correct.

20 Q. I'm now showing you a document that's
 21 been previously marked for identification as
 22 Defendant's Exhibit 4 on September 17, 2013,
 23 and I'm going to ask if you've seen that
 24 document before today (handing).

25 A. You say what date for this, September --

[Page 36]

1 K. Chow
 2 Q. You can look at the document.

3 A. No, I never seen this.

4 Q. I'm now showing you what's been
 5 previously marked for identification as
 6 Defendant's Exhibit 5 on September 17, 2013,
 7 and I'm going to ask you if you've ever seen
 8 that document before today (handing).

9 MR. ANDREWS: I just want to
 10 state for the record that the rules
 11 require that copies be made available to
 12 attorneys as well. As a courtesy to
 13 Mr. Pollack, I will share the witness'
 14 copy, but I expect to be provided with
 15 copies going forward in other
 16 depositions.

17 A. I don't see that. I saw the other one,
 18 the top at the beginning.

19 Q. Excuse me?

20 A. The only thing I don't see, I do not see
 21 these response (indicating).

22 Q. You've never seen those responses?

23 A. No, only just document request.

24 Q. Looking back at Defendant's Exhibit 22,
 25 do you know which documents you reviewed before

[Page 37]

1 K. Chow
 2 you signed this document (handing)?

3 MR. ANDREWS: Objection.

4 A. This document is only a few pages about
 5 representing the interest of all the workers.
 6 It's only a few pages.

7 Q. Are you aware of the company Late Night
 8 Express Courier Services, Inc.?

9 A. I'm sorry. Could you rephrase it?

10 Q. Have you ever heard of the company Late
 11 Night Express Courier, Services, Inc.?

12 A. Of course.

13 Q. I'm going to refer to Late Night Express
 14 Courier, Services, Inc. as Late Night for the
 15 remainder of the deposition if that's okay with
 16 you.

17 A. Yes.

18 Q. What do you know Late Night to be?

19 MR. ANDREWS: Objection.

20 A. The only -- you see on the 1099, put it
 21 every week, and the CEO of Late Night is
 22 Zaimi Duchman.

23 Q. You said you got something every week
 24 with Late Night on it?

25 A. Yeah.

[10] (Pages 34 to 37)

[Page 38]

1 K. Chow
 2 MR. ANDREWS: Objection.
 3 A. Yeah, pay stub every week, except for
 4 like vacation. Then you don't get paid for
 5 that.
 6 Q. What do you understand The Fresh Diet to
 7 be?
 8 MR. ANDREWS: Objection.
 9 A. Fresh Diet? Bag, booklet, shirt, magnet
 10 (handing).
 11 MR. ANDREWS: Let the record
 12 reflect that Mr. Chow has placed several
 13 items on the table.
 14 A. We come to work every day, and we
 15 deliver Fresh Diet bag to the same client. We
 16 get IDs that say Fresh Diet. We get magnets.
 17 We have to identify ourselves in case we get
 18 pulled over by the cops or pull into a driveway
 19 to a client's house. Bags with menus with the
 20 client's name saying whose name is it, the
 21 address, and menu they order for that night.
 22 If it's new clients, we insert a new Fresh Diet
 23 booklet to let them know how to get acquainted
 24 with Fresh Diet. Shirts, same thing, we got to
 25 identify ourselves just in case doorman,

[Page 39]

1 K. Chow
 2 police, security guard would ask us what
 3 apartment are you delivering with, which house
 4 are you delivering with overnight.
 5 MR. ANDREWS: You don't have to
 6 raise your voice. It's okay.
 7 THE WITNESS: I know. I'm
 8 sorry.
 9 A. So the doorman, security guard asks us
 10 okay, what apartment. They may call the
 11 client, ask them you expect a delivery. Client
 12 would ask who is this, what company. They
 13 would say Fresh Diet.
 14 And when we make phone calls on certain
 15 stops where we have to pick up keys, drop-off
 16 keys, we make arrangements to Fresh Diet client
 17 telling hello, this is Ken with The Fresh Diet,
 18 may I speak to such and such and such and such,
 19 okay, I would like to know when I could
 20 schedule for key pickup, is it 9:00 would be
 21 possible. Client say yes. Okay.
 22 And we ring the bell, same thing. They
 23 would ask us the same question, who's this.
 24 This is Ken with The Fresh Diet, I'm here to
 25 pick up the key. Okay, I buzz you in.

[Page 40]

1 K. Chow
 2 MR. ANDREWS: Is that your
 3 answer?
 4 A. Same thing with ID too. ID, doorman,
 5 security guard would say the same thing. Okay.
 6 What company are you representing. Here's my
 7 ID. It would say The Fresh Diet.
 8 And the CEO of Fresh Diet is
 9 Zaimi Duchman, and Judah Schloss is the COO,
 10 Chief Operating Officer.
 11 And one more thing. Read that
 12 contract that I gave you. This says it include
 13 roadside assistance (indicating). So if Fresh
 14 Diet provided us a AAA account under their name
 15 and put it under using South Florida AAA
 16 account, so what does it say on the contract,
 17 roadside assistance? Because they made
 18 promises to us. Mr. Schloss and former
 19 logistic manager, Sandy Ornelas, with a group
 20 of drivers in the meeting say they going to
 21 provide us roadside assistance, cell phones,
 22 bonuses, raises.
 23 Q. Do you mind if I go make a copy of this?
 24 A. Sure.
 25 MR. ANDREWS: Can we go off the

[Page 41]

1 K. Chow
 2 record?
 3 (Whereupon, a recess was taken
 4 at this time.)
 5 (Whereupon, Copy of AAA
 6 membership information was marked as
 7 Defendant's Exhibit 23, for
 8 identification, as of this date.)
 9 Q. I'm now showing you what's been marked
 10 for identification as Defendant's Exhibit 23
 11 (handing).
 12 A. Yes.
 13 Q. Is that a copy of a piece of paper that
 14 you were just showing me from your wallet?
 15 A. Yes.
 16 Q. What is this a document of?
 17 A. It's a document for roadside assistance
 18 with AAA that the company, The Fresh Diet,
 19 provided.
 20 During a meeting, they promise us that
 21 they going to give us roadside assistance, cell
 22 phones, like walkie-talkies, to communicate,
 23 and promise bonuses and raises --
 24 Q. Go ahead.
 25 A. -- in the presence of former logistic

[11] (Pages 38 to 41)

[Page 42]

1 K. Chow
 2 manager, Sandy Ornelas, Mr. Syed Hussain, and
 3 Judah Schloss.
 4 Q. When was this meeting?
 5 A. That's around as of late 2010. I would
 6 say in the fall of 2010.
 7 Q. Did you have AAA before the fall of
 8 2010?
 9 A. Yes.
 10 I had my own AAA, but this AAA that the
 11 company provided is not just for myself, for
 12 the drivers.
 13 Q. You had, for the record, placed a bag, a
 14 booklet, a shirt, and what you say is a
 15 magnetic on the table.
 16 A. Car magnet. I said ID card. I had it
 17 before. I lost it. Hats. I have it
 18 somewhere, misplaced.
 19 Q. Say that again. Sorry.
 20 A. Hats.
 21 Q. You had hats?
 22 A. (Witness nods head.)
 23 Q. You said you had an ID card?
 24 A. ID card.
 25 Q. You don't have that anymore?

[Page 44]

1 K. Chow
 2 A. It's the same owner, Zaimi Duchman.
 3 Q. Why do you believe Zaimi Duchman is the
 4 owner of Late Night?
 5 A. Every day we report to work, we always
 6 report to work to Fresh Diet facility, Fresh
 7 Diet facility. We always have Fresh Diet
 8 clients, consistent. Every day, same amount of
 9 clients from Fresh Diet.
 10 Q. Why do you believe Zaimi Duchman is the
 11 owner of Late Night?
 12 A. You check it through the Florida
 13 Department of Corporation website. That's the
 14 name.
 15 Q. When did you do that?
 16 A. When did I do that?
 17 Q. Yes.
 18 A. Oh, I been doing that for -- for months.
 19 Q. What did you see that listed
 20 Zaimi Duchman as the owner of Late Night?
 21 A. The owner of Late Night is always by
 22 him. Like he say, arranged -- only I saw it on
 23 a Florida Department website, corporation
 24 website. I see his name, that's all.
 25 It may also have the same address with

[Page 43]

1 K. Chow
 2 A. No.
 3 Q. What is your understanding of
 4 The Fresh Diet's business?
 5 MR. ANDREWS: Objection.
 6 MR. POLLACK: What's the basis
 7 of the objection?
 8 MR. ANDREWS: You haven't
 9 established that the witness would have
 10 an understanding of The Fresh Diet's
 11 business.
 12 Q. Do you have an understanding of
 13 The Fresh Diet's business?
 14 A. It's a gourmet delivery company.
 15 Q. What does it deliver?
 16 A. Fresh daily meals.
 17 Q. Who does it deliver to?
 18 A. It delivers to high-end clients that
 19 have the money to spend, celebrities.
 20 Celebrities like Sherri Shepherd, Jonah hill,
 21 baseball player Pablo Sandoval, former Giants
 22 wide receiver Steve Schmidt.
 23 Q. Do you have an understanding of the
 24 relationship between Late Night and
 25 The Fresh Diet?

[Page 45]

1 K. Chow
 2 The Fresh Diet as well too.
 3 Q. What address is that?
 4 A. 9429 Harding Avenue.
 5 MR. ANDREWS: Harding?
 6 THE WITNESS: Yes.
 7 Q. Where is that?
 8 A. Surfside, Florida.
 9 Q. Did you ever meet Mr. Duchman?
 10 A. Yes, once.
 11 Q. When?
 12 A. This was about 2009, earlier 2009.
 13 Q. Where?
 14 A. Oh, in -- I would say in New York.
 15 Q. Where?
 16 A. The old kitchen, 192 Seigel Street.
 17 Q. Did you speak with him?
 18 A. No. I just say hi.
 19 Q. That was it?
 20 A. That's it.
 21 Q. You said a Mr. Judah Schloss is the COO
 22 of Fresh Diet; is that correct?
 23 A. Yes, Chief Operating Officer.
 24 Q. What is the basis of your understanding
 25 that Mr. Schloss is the COO?

[12] (Pages 42 to 45)

[Page 46]

1 K. Chow
 2 A. He's frequent because I see him sometime
 3 comes down to New York kitchen to take a look
 4 at the operation and speak to Mr. Hussain.
 5 Q. Why do you think he's the chief
 6 operating officer?
 7 A. Freshdiet.com has it, the website.
 8 Q. Do you know when The Fresh Diet started
 9 its operation?
 10 A. Approximately 2005.
 11 Q. Do you know where?
 12 A. In South Florida.
 13 Q. Do you know when they started their
 14 operation in New York?
 15 A. Oh, they recently -- Mr. Hussain told me
 16 in personal that they started -- they bought
 17 the company and merged the company called
 18 Balance For Life as of early of 2008.
 19 Q. When did this conversation with
 20 Mr. Hussain occur?
 21 A. That occur like when I was -- got hired.
 22 Q. In November of 2008?
 23 A. Yes.
 24 Q. How did you learn of The Fresh Diet?
 25 A. Fresh Diet -- I respond to an add on

[Page 48]

1 K. Chow
 2 Q. What did you say in response?
 3 A. He said to me -- Mr. Hussain, he said
 4 right now we only have Manhattan route, New
 5 York, for the weekend, and he said it was
 6 stated on the add as like pay \$4 per stop, and
 7 Connecticut it's an average about 200 miles a
 8 day.
 9 Q. Did you accept the position?
 10 MR. ANDREWS: Objection.
 11 A. I say I would like to do Manhattan, the
 12 New York route.
 13 Q. This was all over the phone?
 14 A. Yes.
 15 Q. What was the next step in this process?
 16 A. He tell me go meet him 5:00 p.m. the
 17 first day at the catering place called
 18 San Carlo.
 19 Q. Can you spell that?
 20 A. S-A-N, space, C-A-R-L-O.
 21 The address is 620 Stuyvesant Avenue.
 22 Q. Is that in Brooklyn?
 23 A. No, in Lyndhurst, New Jersey.
 24 Q. Did you meet him the following day at
 25 San Carlo?

[Page 47]

1 K. Chow
 2 Craigslist.
 3 Q. Do you remember what the add said?
 4 A. That we call just a driver.
 5 Q. How did you respond to the add?
 6 A. Oh, call through the phone number,
 7 Mr. Hussain's phone number.
 8 Q. You spoke with Mr. Hussain when you
 9 responded to the add?
 10 A. Yes. It's the same phone number that he
 11 has right now.
 12 Q. How do you know that?
 13 A. I have the add somewhere in my hard
 14 drive, but -- I have the add.
 15 Q. I'm going to request a copy of that
 16 advertisement from your computer.
 17 You called Mr. Hussain in response to
 18 the add, correct?
 19 A. Yes.
 20 Q. What did you discuss with Mr. Hussain in
 21 that phone call?
 22 A. About the procedure itself. There's two
 23 positions I was being offered. One was
 24 Connecticut route. The other one was
 25 Manhattan, New York, New York route.

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1 K. Chow
 2 A. Yes.
 3 Q. At 5:00 --
 4 A. I was waiting for him, yes.
 5 Q. At 5:00 p.m.?
 6 A. Yes.
 7 Q. What did you do that day?
 8 A. Oh, he give me two routes to try it out,
 9 Manhattan route, his own route, and this other
 10 guy named Nafis.
 11 Q. Was it for Fresh Diet?
 12 A. Yes.
 13 Q. Explain what happened that day.
 14 A. That day, he introduced me what we do.
 15 We go to the freezer. We pick up the bags
 16 based on the route. He give us a manifest.
 17 MR. ANDREWS: Just remember, you
 18 have to make sure that your answers are
 19 verbal.
 20 THE WITNESS: Okay.
 21 A. What we do is he introduced me to going
 22 to the kitchen to the freezer, give me a
 23 manifest and look through the bags where there
 24 was packed, zip tied, and if it's not zip tied,
 25 we put ice packs on it, zip it, sort it, and

[13] (Pages 46 to 49)

[Page 54]

1 K. Chow
 2 Mr. Hussain.
 3 MR. ANDREWS: He's asking you
 4 about that night. Just listen.
 5 A. Oh, Mr. Hussain.
 6 Q. He called you?
 7 A. Yeah.
 8 Q. What did he say?
 9 A. He asked me a meeting spot to give him
 10 back the empty cooler bags.
 11 Q. Where was that?
 12 A. That, I don't recall.
 13 Q. After that first night performing
 14 deliveries, when was the next time you
 15 performed deliveries for The Fresh Diet?
 16 A. At that time, a part-time job, so the
 17 next following Friday night.
 18 Q. About a week later?
 19 A. Yeah.
 20 Q. Did you call Mr. Hussain, or did
 21 Mr. Hussain call you to perform those
 22 deliveries?
 23 A. Call Mr. Hussain.
 24 Q. What'd you say?
 25 A. I say I come in.

[Page 56]

1 K. Chow
 2 be making deliveries on a particular night?
 3 A. Oh, Mr. Hussain would notify me.
 4 Q. How would he notify you?
 5 A. He call me by phone.
 6 Q. What would he say?
 7 A. He say Kenny, I need you to come down to
 8 the kitchen to pick up the stuff.
 9 Sometime maybe last minute, maybe a job
 10 that they call out, he might give me additional
 11 routes to do.
 12 Q. How were you paid for the deliveries
 13 that you made?
 14 A. \$4 per stop.
 15 Q. You received a paycheck every week?
 16 A. A week or -- January 23rd I got my first
 17 paycheck from Late Night Express Courier.
 18 Q. What about between November 2008 and
 19 January 23, 2009?
 20 A. Mr. Hussain or Nafis, they would pay me
 21 cash.
 22 Q. At \$4 a stop?
 23 A. Yes.
 24 Q. January 23, 2009 you started getting
 25 paid by check?

[Page 55]

1 K. Chow
 2 Q. Did you go to meet him somewhere that
 3 day?
 4 A. No, meet him in the same spot,
 5 San Carlo.
 6 Q. San Carlo again?
 7 A. Yeah.
 8 Q. What happened that night?
 9 A. Same routine, pick up the bags. Pick up
 10 the bags, whether they're packed or zip tied or
 11 like that, and bring it to your own vehicle and
 12 start making deliveries.
 13 Q. Did this process happen regularly over a
 14 certain period of time?
 15 A. Yes, regularly.
 16 Q. Until when?
 17 A. Until they start moving to Connecticut.
 18 That's approximately around March of 2009.
 19 Q. Were you going back and forth to
 20 San Carlo from November 2008 until March 2009?
 21 A. Yes, same facility, to San Carlo.
 22 Q. San Carlo was a restaurant?
 23 A. Yeah, like a restaurant, like a catering
 24 hall.
 25 Q. How would you know if you were going to

[Page 57]

1 K. Chow
 2 A. Yes.
 3 MR. ANDREWS: Objection.
 4 Q. How many drivers, to the extent you
 5 know, were there working for Late Night in
 6 November 2008?
 7 A. Teresa Jackson, that's one. Marquis
 8 Acklin, that's two. Nafis, three. Syed, four.
 9 The other guy last name's Lee, L-E-E, nickname
 10 they call him Ken, K-E-N.
 11 Q. Someone different than you?
 12 A. Different than me.
 13 Q. Anyone else?
 14 A. After that, we have a month later. I
 15 had Cecilia Jackson, David Williams.
 16 Q. This is about December of 2008?
 17 A. Yeah, around that. Late November to
 18 December 2008.
 19 Q. Were these people all reporting to the
 20 San Carlo facility?
 21 A. Yes.
 22 MR. ANDREWS: Objection.
 23 Q. Do you know what their routes were?
 24 A. That, I do not recall.
 25 Q. Do you remember what your hours were,

[15] (Pages 54 to 57)

[Page 58]

1 K. Chow
2 how long it took you to perform deliveries on
3 any given night in November 2008?
4 MR. ANDREWS: Objection.
5 A. At that time, we report to the facility
6 like 5:00 p.m., around 5:00 a.m., so
7 approximately twelve hours.
8 Q. Did those hours change during the time
9 you performed work?
10 A. Yes, depending how the kitchen was
11 producing. If they didn't produce on time, we
12 would stay a little bit longer or work a little
13 bit later.
14 Q. What would you do when you got to the
15 facility at 5:00 p.m.?
16 MR. ANDREWS: Objection.
17 A. I would wait to see if all the food was
18 packed and ready to be loaded.
19 Q. When were you done with your last
20 delivery?
21 A. Around 5:00.
22 Q. What would you do after you completed
23 your last delivery?
24 A. I would go home.
25 Q. With the bags?

1 K. Chow

2 A. Yeah, we did sign numerous agreements.

3 Q. Do you know if you ever signed an

4 independent contractor agreement?

5 MR. ANDREWS: Objection.

6 A. I did sign independent contractor

7 agreement.

8 (Whereupon, Late Night Express

9 independent contractor agreement was

10 marked as Defendant's Exhibit 24, for

11 identification, as of this date.)

12 Q. I'm now showing you what's been marked

13 for identification as Defendant's Exhibit 24,

14 and I'm going to ask if you've ever seen that

15 document before today (handing).

16 A. This is not the last contract I signed.

17 Even though it was last contract I would have

18 been signed, it would have been page being

19 modified because it include roadside

20 assistance.

21 Yeah, I signed this contract. This is

22 not the last contract I signed. If I would

23 have signed contract, it would have had

24 roadside assistance on it.

25 Q. Was there one you may have signed

[Page 59]

1 K. Chow
2 A. Yeah, with the empty cooler
3 (indicating).
4 Q. Did you report to anyone after you were
5 done with your deliveries in November 2008?
6 A. With that, with the newspaper, it can
7 overlap too at the same time.
8 Q. Were you performing meal deliveries and
9 newspaper deliveries on the same nights in
10 November 2008?
11 A. It happens a few times.
12 Q. Did that happen until a certain time?
13 A. I went to Fresh Diet first. If I finish
14 Fresh Diet, I would report to newspaper
15 delivery.
16 Q. You had newspapers and meals in your
17 car --
18 MR. ANDREWS: Objection.
19 Q. -- for deliveries?
20 MR. ANDREWS: Objection.
21 A. Yes.
22 MR. ANDREWS: Mischaracterizes
23 his testimony.
24 Q. Did you sign any type of agreement with
25 Late Night?

1 K. Chow
2 without roadside assistance on it?
3 A. I signed one with roadside assistance.
4 Q. Did you ever sign one without roadside
5 assistance?
6 A. That, I do not recall.
7 Q. You said you recalled signing numerous
8 contracts.
9 A. Yes, but when I signed the recent last
10 contract, I signed with roadside assistance,
11 include it, highlight it.
12 MR. ANDREWS: Mr. Pollack's
13 question is do you recall ever signing
14 any agreement that did not have roadside
15 assistance.
16 A. Previously, yes.
17 Q. The document that's been marked as
18 Defendant's 24, does that have your signature
19 on it?
20 A. Yeah, this is my signature (indicating).
21 Q. You're saying there may have been a
22 document you signed after this one that had
23 roadside assistance?
24 A. Yes.
25 Q. Do you have a copy of that document?

[16] (Pages 58 to 61)

[Page 66]

1 K. Chow
 2 performed work from November 2008 until when?
 3 When did you stop?
 4 A. April 2012.
 5 Same car. But like I said, some
 6 occasions I rent Zipcars.
 7 Q. What was the car again, a 19 what?
 8 A. 1993 Honda Accord.
 9 Q. Was that a purchase or lease?
 10 A. I purchased used.
 11 Q. When did you purchase it?
 12 A. Around like May of 2002.
 13 Q. Do you have insurance for that car?
 14 A. Yes.
 15 MR. ANDREWS: Objection.
 16 Q. Through who?
 17 A. Beginning, it's like different insurance
 18 company, but I mostly deal with GEICO.
 19 Q. In November 2008, who was your insurance
 20 carrier?
 21 A. GEICO.
 22 Q. Was it GEICO from November 2008 through
 23 April 2012?
 24 MR. ANDREWS: Objection.
 25 A. Yes.

[Page 67]

1 K. Chow
 2 Q. You paid for your own insurance that
 3 whole time?
 4 A. Correct.
 5 MR. ANDREWS: Objection.
 6 Q. Did you ever ask Late Night to reimburse
 7 you for that insurance?
 8 A. That, I did not.
 9 Q. Did you ever ask The Fresh Diet to
 10 reimburse you for that insurance?
 11 A. That, I did not.
 12 MR. POLLACK: I want to take a
 13 five-minute break.
 14 (Whereupon, a recess was taken
 15 at this time.)
 16 (Whereupon, Class action
 17 affidavit was marked as Defendant's
 18 Exhibit 26, for identification, as of
 19 this date.)
 20 Q. I'm now showing you what's been marked
 21 for identification as Defendant's Exhibit 26
 22 (handing).
 23 MR. ANDREWS: Is this my copy
 24 (indicating)?
 25 MR. POLLACK: Yes.

[Page 68]

1 K. Chow
 2 Q. I'm going to ask if you've seen that
 3 document before today.
 4 A. Yes, I've seen it, and I signed it at
 5 the same day too.
 6 Q. Signed it the same day you saw it?
 7 A. Yeah.
 8 Q. That was on February 1, 2013?
 9 A. Correct.
 10 Q. Do you know who prepared this document?
 11 MR. ANDREWS: Objection.
 12 A. Yeah. This is -- went to the attorney's
 13 office, and I signed it.
 14 MR. ANDREWS: Again, do not
 15 disclose what you discussed with your
 16 attorneys.
 17 THE WITNESS: Okay.
 18 Q. Did you review this document before you
 19 signed it?
 20 A. Yeah. I went through number by number.
 21 Q. You reviewed each word on the document
 22 before you signed it?
 23 A. Yes, including the exhibits.
 24 Q. Looking at paragraph 2 of
 25 Defendant's 26, it says that you were employed

[Page 69]

1 K. Chow
 2 by the defendants from approximately
 3 November 2008 until April 2012.
 4 Do you see that statement?
 5 A. Yes.
 6 Q. Which defendants are you referring to in
 7 that paragraph?
 8 A. Okay. YS Catering, Fresh Diet, Fresh
 9 Diet, Inc., Late Night Express Courier, YS
 10 Catering Holdings, YS Catering, Syed Hussain,
 11 Judah Schloss, Zaimi Duchman.
 12 Q. Is it your contention that you were
 13 employed by all the entities and individuals
 14 listed from November 2008 until April 2012?
 15 MR. ANDREWS: Objection.
 16 A. Yeah, by the same owner, Zaimi Duchman.
 17 Q. Looking at paragraph 5 of the affidavit
 18 marked as Defendant's 26, it says, "My job
 19 responsibilities as a driver/food delivery
 20 employee consisted of showing up to The Fresh
 21 Diet, Inc.'s Brooklyn facilities, receiving
 22 instructions as to my delivery routes,
 23 obtaining prepared meals, and personally
 24 delivering them to The Fresh Diet, Inc.'s
 25 customers throughout New York City and the

[18] (Pages 66 to 69)

[Page 70]

1 K. Chow
 2 tri-state metropolitan region, including
 3 locations in New York, New Jersey and
 4 Connecticut."
 5 Do you see that statement?
 6 A. Yes.
 7 Q. Did you perform these same
 8 responsibilities from November 2008 until
 9 April 2012?
 10 A. Yes.
 11 Q. When you say that you were showing up at
 12 The Fresh Diet, Inc.'s Brooklyn facilities,
 13 what do you mean?
 14 A. Two facilities, the one in 192 Seigel
 15 Street, March 2009 to June of 2011. Then they
 16 moved to another place at 588 Baltic Street or
 17 345 Butler Street on the other entrance in
 18 Brooklyn, New York too.
 19 Q. When was that?
 20 A. That's in June to the present.
 21 MR. ANDREWS: June of what year?
 22 THE WITNESS: June 2011 to the
 23 present.
 24 Q. At some time, you're saying that
 25 The Fresh Diet moved its facility to 192 Seigel

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1 K. Chow
 2 A. Lyndhurst.
 3 Q. That was the San Carlo?
 4 A. Yes.
 5 Q. When you were performing deliveries from
 6 November 2008 through March 2009, you were
 7 picking up meals at the San Carlo facility,
 8 correct?
 9 A. Yes.
 10 Q. You were delivering those meals to
 11 New York, correct?
 12 A. Yes, in the tri-state area.
 13 Q. Were you delivering to any other
 14 locations except for New York between November
 15 2008 and March 2009?
 16 A. No, just New York.
 17 Q. Manhattan?
 18 A. Manhattan, Long Island, Jersey.
 19 Q. You were performing stops in New Jersey,
 20 Long Island, and Manhattan?
 21 A. Yes.
 22 Q. On the same night?
 23 A. It depends based on driving needs. If
 24 the driver call out, Mr. Hussain would give me
 25 two routes, cover either Jersey, Manhattan or

[Page 71]

1 K. Chow
 2 Street?
 3 A. Yes, in March of 2009.
 4 Q. Before that, where was it located?
 5 A. First, beginning, was located at 620 --
 6 620 Stuyvesant Avenue, Lyndhurst, New Jersey.
 7 Q. From November 2008 until March 2009, it
 8 was in New Jersey?
 9 A. Let me backtrack. It was my mistake.
 10 Then we moved to Connecticut after that at
 11 45 Larkin Street, Stamford Connecticut. It's
 12 not March of -- I would say for Seigel Street
 13 it would be around July of 2009.
 14 Q. Not March?
 15 A. Not March. March we moved to
 16 Connecticut.
 17 Q. Just to get this clear --
 18 A. Yes.
 19 Q. -- from November 2008 until about March
 20 of 2009, the facility that you're referring to
 21 was located in New Jersey, correct?
 22 A. Yes.
 23 Q. Lyndhurst, New Jersey?
 24 A. Lyndhurst, New Jersey.
 25 Q. Lindenhurst or Lyndhurst?

[Page 73]

1 K. Chow
 2 Long Island or Manhattan.
 3 Q. Sometimes you would perform deliveries
 4 in New Jersey and New York on the same night?
 5 A. Yes.
 6 Q. Did you receive the same compensation
 7 every week between November 2008 and March
 8 2009?
 9 MR. ANDREWS: Objection.
 10 A. Could you rephrase it, Mr. Pollack? You
 11 say compensation.
 12 Q. You received a check every week from
 13 Late Night; is that correct?
 14 A. Correct.
 15 Q. Starting in January 2009?
 16 A. Yes.
 17 Q. From January 2009 until March 2009, was
 18 the amount that you received every week the
 19 same?
 20 A. No, it varies.
 21 Q. What was it based on?
 22 A. It's a mixture of miles. Like if you do
 23 New Jersey route, Long Island, like part of
 24 Queens, Long Island, Connecticut, Westchester,
 25 it's based by miles, which is about \$0.53 per

[19] (Pages 70 to 73)

[Page 74]

1 K. Chow
 2 mile and \$1 per stop.
 3 Q. You'd get paid per mile and per stop?
 4 A. Yes.
 5 MR. ANDREWS: Objection.
 6 Q. This was different than the \$4 per stop
 7 that you said you previously were receiving?
 8 A. Yeah. That's only for city route.
 9 Q. If you were delivering exclusively in
 10 the city, it was just based on per stop,
 11 correct?
 12 A. Yes, correct.
 13 Q. If you were outside the borough of
 14 Manhattan --
 15 A. Yes.
 16 Q. -- then it would be per stop and mile?
 17 A. Yes.
 18 Q. During this time period, being
 19 November 2008 to March 2009, you would show up
 20 to the San Carlo restaurant, deliver meals, and
 21 then return home at night?
 22 A. Yes.
 23 MR. ANDREWS: Objection.
 24 Q. That was the same every night that you
 25 delivered meals for The Fresh Diet between

[Page 76]

1 K. Chow
 2 Q. Did you work varying hours between
 3 November 2008 and March 2009 when you performed
 4 deliveries?
 5 A. Yes, varying hours.
 6 Q. What was the earliest you would show up?
 7 A. I would say 5:00 p.m.
 8 Q. What was the latest you would show up?
 9 A. The latest would show up would be like
 10 8:00, 9:00.
 11 Q. Would you always be done by 5:00 a.m.?
 12 MR. ANDREWS: Objection.
 13 A. Not all the time, depending on weather
 14 conditions. He might give me like two or three
 15 routes. I usually get done like 7:00 in the
 16 morning.
 17 Q. Would you ever be done before 5:00 a.m.?
 18 A. Sometimes, depending on the kitchen, how
 19 early the kitchen's done with the packaging.
 20 Q. Then in March 2009, you said that they
 21 moved to Connecticut.
 22 A. Yes.
 23 MR. ANDREWS: Objection.
 24 Not sure who "they" is.
 25 Q. Was there a restaurant or a catering

[Page 75]

1 K. Chow
 2 November 2008 until March 2009?
 3 MR. ANDREWS: Objection.
 4 A. Yes.
 5 Q. When you completed your routes, did you
 6 report to anyone at Late Night to say I'm
 7 finished?
 8 A. Yeah, Mr. Hussain.
 9 Q. How would you do that?
 10 A. Would call him.
 11 Q. What would you say?
 12 A. I would tell Mr. Hussain I finished the
 13 route.
 14 Q. Would you do this after your last stop
 15 or when you returned home?
 16 A. After the last stop.
 17 Q. While you were still in the car?
 18 A. Yeah, you would call or outside
 19 finishing my last stop and bring the bag back
 20 to my truck.
 21 Q. It was a phone call?
 22 A. Phone call.
 23 Q. Not a text message?
 24 A. No. It's not like every time.
 25 Sometimes.

[Page 77]

1 K. Chow
 2 hall that Fresh Diet was at at that point?
 3 A. It's like a catering space and an office
 4 part.
 5 Q. It was different than San Carlo?
 6 A. Yes, different.
 7 Q. Is there a kitchen there?
 8 A. Yeah, there's a kitchen.
 9 Q. Fresh Diet was located in Connecticut
 10 from March 2009 until July 2009?
 11 A. Yes.
 12 Q. Where were you performing deliveries for
 13 The Fresh Diet during this time?
 14 A. 45 Larkin Street, Stamford, Connecticut.
 15 Q. Where were the deliveries that you were
 16 performing located?
 17 A. Same thing, like Jersey, Manhattan,
 18 Brooklyn, Queens, Long Island.
 19 Q. Did the compensation change?
 20 A. Yes, it did change.
 21 Q. How?
 22 A. At that time when we moved to
 23 Connecticut, manager decide they going to cut
 24 thirty miles off from the actual route that I'm
 25 going to get for that night, so they'll cut

[20] (Pages 74 to 77)

[Page 78]

1 K. Chow
 2 thirty miles, so I would lose at least about
 3 \$16 a night.
 4 Q. How do you calculate the \$16?
 5 A. Like if I have, let's say, one hundred
 6 twenty miles minus thirty miles from the cut --
 7 from Stamford to the cut like into like the New
 8 York border, this is where they would put me
 9 to -- where they going to compensate me from
 10 there. So I would only do like one hundred
 11 twenty miles actual. They would cut
 12 thirty miles. I'm only get paid for the ninety
 13 miles for that night.
 14 Q. How did you track the miles?
 15 A. Track the miles? I use the Microsoft
 16 Street & Trips app.
 17 Q. Would you do that before or after the
 18 routes?
 19 A. That, I do after the route.
 20 Q. During this time period, again, were you
 21 picking it up and then returning home after you
 22 were done delivering the meals?
 23 A. Yes.
 24 Q. You weren't returning the bags back to
 25 the facility?

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1 K. Chow
 2 A. If they give you assignment for the next
 3 day, you just go return bags to the facility.
 4 Q. You kept the bags at your home until the
 5 next day?
 6 A. Yes.
 7 MR. ANDREWS: Objection.
 8 Q. At some point in July 2009, is it your
 9 testimony that The Fresh Diet moved to
 10 192 Seigel Street?
 11 A. Correct.
 12 Q. And that they were at that facility from
 13 July 2009 until June 2011?
 14 A. Correct.
 15 Q. Then in June 2011, they moved to 588
 16 Baltic Street?
 17 A. Correct.
 18 Q. Did you live in the same place the whole
 19 time that you performed deliveries from
 20 November 2008 until April 2012?
 21 A. Yes.
 22 Q. Looking back at paragraph 5 --
 23 A. Okay.
 24 Q. -- after saying that you showed up to
 25 the Brooklyn facilities, it says that you

[Page 80]

1 K. Chow
 2 received instructions as to your delivery
 3 routes, correct?
 4 A. Correct.
 5 Q. What instructions would you receive?
 6 A. Based on the manifest or based on
 7 additional instructions Mr. Hussain might give
 8 me at the last minute, like picking up keys,
 9 calling clients to arrange key pickups and bag
 10 pickups.
 11 Q. Would those be verbal instructions or
 12 written instructions?
 13 A. Both, written and verbal instructions as
 14 well too.
 15 Q. Did you ever receive instructions on the
 16 order in which you were to deliver the meals?
 17 A. Yes, based on the driver's manifest.
 18 Q. What do you mean that that had the order
 19 in which you were to deliver them?
 20 MR. ANDREWS: Objection.
 21 A. If you doing the miles and the stops,
 22 it's based on the order that they provide on
 23 the manifest.
 24 Q. Would anyone at The Fresh Diet know if
 25 you went out of order on the manifest?

[Page 81]

1 K. Chow
 2 MR. ANDREWS: Objection.
 3 A. He would know. Mr. Hussain would know.
 4 Q. How?
 5 A. When he does payroll every Thursday.
 6 Q. How would he know if you went out of
 7 order on a manifest?
 8 A. When you do your speedometer, your
 9 odometer, you check your odometer, check with
 10 the GPS, and you check the manifest. He'll
 11 check the manifest against what you give him on
 12 payroll.
 13 Q. How do you know that he did that?
 14 A. Like I said, every Thursday he would do
 15 it on payroll. He would match it with the
 16 manifest.
 17 Q. Did you see him do that?
 18 A. Yes.
 19 Q. When?
 20 MR. ANDREWS: Objection.
 21 A. That, I see it. He does it as of
 22 present, of this time.
 23 Q. What's that?
 24 A. The present, as of right now.
 25 Q. What about in 2008?

[21] (Pages 78 to 81)

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1 K. Chow
 2 A. 2008? That, I do not recall.
 3 Q. 2009?
 4 A. That, I do not recall.
 5 Q. 2010?
 6 A. That, I do not recall.
 7 Q. 2011?
 8 A. 2011 I was mostly in Manhattan.
 9 Q. What were your delivery routes as
 10 referred to in paragraph 5 of the affidavit
 11 marked as Defendant's 26?
 12 MR. ANDREWS: Where it says
 13 "delivery routes," what were the routes
 14 (indicating)?
 15 A. At the beginning, on the weekends, I
 16 would do Manhattan. As I become more
 17 full-time, I have different routes. It could
 18 be Long Island, New Jersey, or mixture with
 19 Manhattan.
 20 Q. Did you ever do Connecticut deliveries?
 21 A. Only just one bag.
 22 Q. The whole time you were there?
 23 A. Yeah, only one bag that's in
 24 Connecticut.
 25 Q. One bag in a route, or just one bag that

[Page 84]

1 K. Chow
 2 MR. ANDREWS: Objection.
 3 A. That's the last step.
 4 Sometimes we might have to pack our own
 5 bags if there's not enough empty bags for
 6 Fresh Diet to supply.
 7 Q. Your own empty bags, what are you
 8 referring to?
 9 A. Cooler bags right there (indicating).
 10 Q. The ones that you would have from the
 11 prior night?
 12 MR. ANDREWS: Objection.
 13 A. From the Brooklyn facility. It could be
 14 that the bags that they have leftover or the
 15 bags that the drivers may have with them.
 16 Q. Where would you obtain the prepared
 17 meals?
 18 A. At the Brooklyn -- we go to Fresh Diet
 19 facility to pick up the food.
 20 Q. At 192 Seigel Street, where were the
 21 prepared meals obtained from? Physically
 22 within the building, where were they?
 23 A. Also in 192 Seigel Street.
 24 Q. Was there a loading dock?
 25 A. Yeah.

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1 K. Chow
 2 you delivered the whole time between --
 3 A. No, because the person left the bag, so
 4 I have to help her and deliver the bag to a
 5 client.
 6 Q. Otherwise, you were exclusively in
 7 New Jersey and --
 8 A. Yeah, Long Island and Manhattan.
 9 Q. -- Long Island and Manhattan?
 10 Moving on with paragraph 5 of the
 11 affidavit, it says that you were obtaining
 12 prepared meals, correct?
 13 MR. ANDREWS: Obtaining prepared
 14 meals (indicating).
 15 A. Yes.
 16 Q. What do you mean by that?
 17 A. Obtaining prepared meals that we pick up
 18 the food from -- from The Fresh Diet facility,
 19 whether if they were packed -- if they were
 20 packed and zip tied, and we start loading up
 21 and bring it to our car, or we wait in the
 22 kitchen for depending on the kitchen, how long
 23 it take them to finish packing all the food.
 24 Q. Then you would load the bags into your
 25 car?

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1 K. Chow
 2 We just bring our car in into the
 3 garage. The freezer would be in the back.
 4 MR. ANDREWS: Remember, she can
 5 only take down what you say.
 6 THE WITNESS: Okay.
 7 Q. Explain verbally.
 8 A. Okay. This is the entrance, the garage
 9 entrance, back our car in (indicating). You
 10 see the food -- the prepared meals are in the
 11 back of the facility like in the freezers, two
 12 of the freezers.
 13 Q. You would obtain them from the freezer?
 14 A. Yes.
 15 Q. You'd back your car in and then
 16 obtain --
 17 A. Yes.
 18 Q. -- the meals from the freezer?
 19 MR. ANDREWS: Objection.
 20 Q. Then what would you do with the meals
 21 from the freezer?
 22 A. We get the manifests first from
 23 Mr. Hussain, see how many stops we have, how
 24 many bags we have. Then we go down to the
 25 freezer and start sorting out the bags, compare

[22] (Pages 82 to 85)

[Page 86]

1 K. Chow
 2 the number of the bags that they have on the
 3 manifest to number of bags they have available
 4 in the freezer. So any like extra bags or
 5 missing bags, we report to Mr. Hussain for that
 6 route.
 7 Q. When did you do that?
 8 A. We do that every night.
 9 Q. Before you go to deliver the meals or
 10 when you're done?
 11 A. Before we deliver the meals.
 12 Q. You report any missing bags?
 13 A. Yes.
 14 Q. Meaning what?
 15 What's a missing bag?
 16 A. If a client was scheduled to have
 17 delivery for that night but no food was
 18 prepared for them.
 19 Q. Moving on, in that same paragraph, it
 20 says that you personally delivered to
 21 Fresh Diet customers throughout New York City,
 22 including the locations in New York,
 23 New Jersey, and Connecticut, correct?
 24 A. Correct.
 25 Q. Did you or did you not deliver meals in

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1 K. Chow
 2 A. Check back in?
 3 Q. Yes.
 4 A. We just empty out the bags.
 5 Q. What do you mean emptied out the bags?
 6 You mean emptied the empty bags from
 7 your car?
 8 A. Yes.
 9 Q. What paperwork would you complete?
 10 A. Oh, the sign-in sheet that they
 11 provided. That didn't come later.
 12 Q. When did that come?
 13 A. Like late of 2010, around fall of 2010.
 14 Q. Is it fair to say that you did not
 15 return to The Fresh Diet's facilities at the
 16 end of your delivery routes for the entire time
 17 that you performed deliveries for
 18 The Fresh Diet from November 2008 until
 19 April 2012?
 20 MR. ANDREWS: Objection.
 21 A. That's not true. We did return.
 22 Q. Not the whole time that you did that,
 23 correct?
 24 A. From June to present, we required to
 25 return back to the facility to drop off empty

[Page 87]

1 K. Chow
 2 Connecticut?
 3 A. Just only one bag.
 4 Q. The next sentence says, "After
 5 completing the meal deliveries, I would have to
 6 return to The Fresh Diet, Inc.'s Brooklyn
 7 facilities to check back in, complete required
 8 paperwork, and return empty Fresh Diet bags."
 9 A. Correct.
 10 Q. When did that start happening?
 11 MR. ANDREWS: Objection.
 12 A. That? I say around 2010.
 13 Q. What changed?
 14 A. June of 2010.
 15 Q. Is it your testimony that you were no
 16 longer returning to your residence at the end
 17 of your delivery routes starting in June 2010?
 18 A. Correct.
 19 MR. ANDREWS: Objection.
 20 Q. Why not?
 21 A. The reason, they were running out of
 22 bags, number one, and we have a new general
 23 kitchen manager by Peter Cullius.
 24 Q. What would you do when you checked back
 25 in?

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1 K. Chow
 2 bags and the ice.
 3 Q. June 2010?
 4 A. Yes.
 5 Q. From November 2008 until June 2010, you
 6 were not required to, correct?
 7 A. No, you're not required.
 8 Q. Did you always return to the Brooklyn
 9 facilities from June 2010 until April 2012
 10 after you completed your routes?
 11 A. Yes.
 12 Q. Moving on to paragraph 8, it says,
 13 "Throughout my employment, I often worked
 14 significantly in excess of forty hours a week,
 15 yet was never paid overtime compensation of one
 16 and one-half times my regular rate of pay."
 17 Do you see that paragraph?
 18 A. Yes.
 19 Q. Did you produce documents to your
 20 attorney regarding the hours you claim you
 21 worked for The Fresh Diet?
 22 A. The only document I submitted was
 23 driver's manifest.
 24 Q. Do you believe that those would indicate
 25 the hours that you worked?

[23] (Pages 86 to 89)

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1 K. Chow
 2 A. No. It's inaccurate.
 3 MR. ANDREWS: Objection.
 4 A. It's only based on when you're doing the
 5 route, the delivery. It doesn't include time
 6 spent over there waiting for the food to be
 7 prepared and finished to sort or pack up and
 8 load up to leave facility. And also, when we
 9 coming back to drop off the bags, it doesn't
 10 include when we drop off the bags and ice, the
 11 time that we spent over there sorting, putting
 12 the empty bags, hang the empty bags, and
 13 putting the ice back into the freezer.
 14 MR. ANDREWS: Can I ask everyone
 15 for a two-minute break for myself? I
 16 need a two-minute break if that's okay.
 17 MR. POLLACK: Yes.
 18 (Whereupon, a recess was taken
 19 at this time.)
 20 Q. Who set the time that you were to show
 21 up to the Seigel Street facility from July 2009
 22 to June 2012?
 23 MR. ANDREWS: Objection.
 24 A. Could you repeat it, rephrase it?
 25 Q. Did anyone tell you what time to show up

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1 K. Chow
 2 to Fresh Diet's Brooklyn facility at 192 Seigel
 3 Street from July 2009 to June 2011?
 4 MR. ANDREWS: Objection.
 5 A. Before that, no, nobody ever said
 6 anything.
 7 Q. How did you know when to show up?
 8 A. It's always that Mr. Hussain say even
 9 though, like I said, the food's not ready,
 10 always showed up at 5:00 in the evening.
 11 Q. When did you show up at 5:00?
 12 A. Every day.
 13 Q. From November 2008 until April 2011?
 14 A. No, until we were given a schedule.
 15 Q. When did you receive a schedule?
 16 A. That's around late of 2010.
 17 Q. What time did that say you were to
 18 arrive?
 19 MR. ANDREWS: Objection.
 20 A. They tell me to arrive at 8:00 p.m.
 21 Q. Did you arrive at 8:00 p.m.?
 22 A. Sometimes arrive at 8:00 p.m.
 23 Q. When are we talking about now?
 24 A. Like I said, prior to that -- like I
 25 said, I would show up at 5:00 p.m. If

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1 K. Chow
 2 Mr. Hussain needs me to do something, I would
 3 show up at 5:00 p.m.
 4 Q. Where, in New Jersey?
 5 A. No, at The Fresh Diet.
 6 Q. Brooklyn?
 7 A. Brooklyn.
 8 Q. Then sometime you got a schedule to show
 9 up at 8:00 p.m.?
 10 A. Yes.
 11 Q. Do you remember when that was?
 12 A. That, I don't recall, but I was given
 13 that schedule.
 14 Q. 2010?
 15 MR. ANDREWS: Objection.
 16 A. 2010, like late 2010.
 17 Q. Before late 2010, is it your testimony
 18 you were showing up around 5:00 p.m.?
 19 A. Yes.
 20 Q. Sometime in late 2010, you got a
 21 schedule to show up at 8:00 p.m.?
 22 A. Yes.
 23 Q. Did you arrive at work at 8:00 p.m. when
 24 you got that schedule?
 25 A. Yes, unless if a certain circumstances,

[Page 93]

1 K. Chow
 2 I would call Mr. Hussain or text him that I
 3 would be running late.
 4 Q. Were you ever penalized if you showed up
 5 late?
 6 A. Not as of -- not -- no. If I give him
 7 an advance notice that I would be running late,
 8 he would not penalize me.
 9 Q. How late would you show up to work?
 10 MR. ANDREWS: Objection.
 11 A. I would let him know by text, maybe
 12 about a half an hour to an hour late.
 13 Q. So by 8:30 or 9:00 p.m.?
 14 A. Yes.
 15 MR. ANDREWS: Objection.
 16 Q. This is from late 2010 until April 2012?
 17 A. Yes.
 18 And usually from that time, in between,
 19 I'll be working at home too off the clock
 20 making manifests for the Manhattan drivers.
 21 That's as of January of 2011.
 22 Q. You said you saw a document containing
 23 the requests made by the defendants for support
 24 of your claims in this action, is that fair to
 25 say?

[24] (Pages 90 to 93)

[Page 94]

1 K. Chow
 2 MR. ANDREWS: Objection.
 3 A. Yeah. I have that in the PDF file,
 4 request by defendants.
 5 Q. Do you recall seeing a request that said
 6 "show the documents evidencing the number of
 7 hours you worked for the defendants"?
 8 A. It has that question, but like I said --
 9 would you rephrase it? I'm sorry.
 10 Q. Do you recall seeing a request by the
 11 defendants asking you to produce each and every
 12 document which sets forth the number of hours
 13 actually worked by you to support your claims
 14 in the complaint?
 15 A. Yeah, I've seen that question.
 16 Q. Do you remember producing documents to
 17 your attorney in response to that request?
 18 A. That, I do not recall.
 19 (Whereupon, Manifests were
 20 marked as Defendant's Exhibits 27
 21 through 29, for identification, as of
 22 this date.)
 23 Q. I'm now showing you what's been marked
 24 for identification as Defendant's Exhibits 27,
 25 28, and 29 (handing).

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1 K. Chow
 2 MR. POLLACK: Defendant's 27 is
 3 two-sided marked FD000408 to 000565, 28
 4 is FD000586 to 000762, and 29 is 001107
 5 to FD001607.
 6 Q. Referring to Defendant's Exhibit 27, I'm
 7 going to ask if you've ever seen those
 8 documents before today.
 9 A. Yes.
 10 MR. ANDREWS: Let's make sure.
 11 Which is 27? Is that 27
 12 (indicating)?
 13 MR. POLLACK: Yes.
 14 MR. ANDREWS: His question is
 15 have you seen this (indicating).
 16 A. Yes. I have it.
 17 Q. What about 28?
 18 Have you seen that before today?
 19 A. Yes. I have it.
 20 Q. Have you seen Defendant's 29 before
 21 today?
 22 A. Yes.
 23 Q. Do you know if these are documents that
 24 you produced to your attorneys?
 25 A. Yeah, this is all of my documents. I

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1 K. Chow
 2 gave what I have in my possession with the
 3 attorney.
 4 Q. Do these indicate the hours that you
 5 worked for defendants?
 6 MR. ANDREWS: Objection.
 7 A. At that time, we just only put in the --
 8 how many empty bags that we pick up. After
 9 like June of 2010, then we start putting the
 10 number of bags and the time.
 11 Q. Do any of these documents set forth the
 12 number of hours you worked for the defendants?
 13 MR. ANDREWS: Objection.
 14 A. Only a few times, but mostly how many
 15 bags we pick up (indicating).
 16 Q. Now you're referring to FD000673,
 17 correct?
 18 A. Yes.
 19 Q. What are you pointing at on that
 20 document?
 21 A. The time that I stop by to drop the bag
 22 for the client (indicating).
 23 Q. You're pointing to an 8: --
 24 A. 45.
 25 Q. What does that mean?

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1 K. Chow
 2 A. 8:45 in the evening.
 3 Q. Means what?
 4 A. That I arrive there. That I dropped the
 5 food and pick up the empty bags.
 6 Q. What's the next time on that sheet?
 7 A. 8:51 (indicating).
 8 Q. Other than that --
 9 A. This one too (indicating).
 10 Q. Other than certain times --
 11 MR. ANDREWS: Were you saying
 12 something?
 13 THE WITNESS: Yeah.
 14 Q. Now you're referring to 000670?
 15 A. Yeah.
 16 Q. Other than the times that you may have
 17 delivered a bag for a certain client, does
 18 Defendant's Exhibit 27 indicate the hours you
 19 would have worked for Late Night?
 20 MR. ANDREWS: Objection.
 21 MR. POLLACK: What's the basis?
 22 MR. ANDREWS: He testified
 23 previously how he determined which hours
 24 he worked, so mischaracterization of
 25 testimony.

[25] (Pages 94 to 97)

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[Page 100]

1 K. Chow
2 If you can answer the question,
3 try.
4 THE WITNESS: Okay.
5 Q. The question is simply, do those
6 indicate the hours you worked for Late Night or
7 The Fresh Diet?
8 A. No, no time, just the empty bags that we
9 pick up.
10 Q. This does not have the hours?
11 A. No, doesn't have the hours.
12 Q. Does Defendant's 28 have the hours?
13 A. It has -- a few pages has the time.
14 Q. What about the hours that you would have
15 been performing work?
16 A. There's nothing in there (indicating).
17 Q. What about Defendant's 29? Again, just
18 whether it indicates the hours you would have
19 been performing work.
20 A. This is not my route. This is for
21 Mr. Hernandez route.
22 Q. Defendant's 29 is not from you?
23 A. Of course not, for Mr. Hernandez.
24 Q. Defendant's 29 does not have any
25 information concerning the hours you would have

1 K. Chow
2 excess of forty hours a week for the
3 defendants?
4 MR. ANDREWS: Objection.
5 A. Yes, it does.
6 Q. How?
7 MR. ANDREWS: Objection.
8 A. All the manifests collect the days that
9 I work. I have it in my possession, the number
10 of days I work. If I have six days, I would
11 have six days worth of manifests for that week.
12 Q. How would Defendant's 27 indicate that
13 you worked more than forty hours in any given
14 week?
15 MR. ANDREWS: Objection.
16 A. They don't have the time. This only the
17 number of bags that we pick up.
18 Q. Does Defendant's 27 indicate that you
19 worked more than forty hours --
20 MR. ANDREWS: Objection.
21 Q. -- performing work as a delivery driver
22 for the defendants?
23 A. Yes.
24 Q. How?
25 A. This is what manifest I have, the

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1 K. Chow
2 performed work for the defendants?
3 A. No information.
4 MR. ANDREWS: Let him finish.
5 THE WITNESS: Okay.
6 Q. Is that a yes or a no?
7 A. That's not mine. That's not mine.
8 Q. It does not?
9 A. It does not pertain to my route.
10 MR. ANDREWS: It does not
11 pertain to your route.
12 Q. Defendant's 29 does not have any
13 indication of the hours you worked for the
14 defendants?
15 A. Only I see right here (indicating).
16 Q. But that's not yours?
17 A. That's not mine.
18 Q. It doesn't have any information
19 concerning the hours you worked for the
20 defendants?
21 A. No. It's not mine.
22 Q. So the answer's no?
23 A. No.
24 Q. Does Defendant's 27 support your
25 allegation that you worked significantly in

1 K. Chow
2 assignment I have. I have in my possession.
3 It would tell me I have the -- where I'm
4 working at, what route I'm working at, and the
5 miles I have.
6 Q. What about the hours?
7 A. The hours would not be posted, just only
8 the empty cooler bags.
9 Q. Defendant's Exhibit 29 is not your
10 route, correct?
11 A. No.
12 Q. It has nothing to do with the duties you
13 performed or hours you worked for the
14 defendants?
15 A. No.
16 Q. Referring back to the affidavit, being
17 Defendant's Exhibit 26, turning your attention
18 to paragraph 9 of that document, it says,
19 "During my employment with the defendants, I
20 interacted with other drivers/food delivery
21 employees on a daily basis."
22 Do you see that paragraph?
23 A. Yes.
24 Q. How did you interact with other drivers
25 and food delivery employees?

[26] (Pages 98 to 101)

[Page 102]

1 K. Chow
 2 MR. ANDREWS: Objection.
 3 A. Oh, we meet them on the daily basis at
 4 the same Brooklyn facility, 192 Seigel Street
 5 and the one, 588 Baltic Street.
 6 Q. How would you interact with them?
 7 A. If the food is not done, we would be
 8 sitting there waiting.
 9 Q. Where?
 10 A. At both facilities, 192 Seigel Street
 11 and 588 Baltic Street.
 12 Q. Where in that facility would you be
 13 interacting?
 14 A. Inside a kitchen facility or outside.
 15 Q. What would you discuss?
 16 MR. ANDREWS: Objection.
 17 Q. Would you speak with the other drivers?
 18 A. Of course.
 19 Q. What would you discuss?
 20 A. Something about the food, why is it late
 21 or that -- severe weather conditions that we
 22 encountered, that we had to deliver far out
 23 during a blizzard.
 24 Q. Did you ever discuss your compensation
 25 with other drivers?

[Page 103]

1 K. Chow
 2 A. Yes.
 3 Q. What would you discuss about your
 4 compensation?
 5 MR. ANDREWS: Objection.
 6 A. Pay per stop.
 7 Q. Who?
 8 A. Mr. Hernandez.
 9 Q. Anyone else?
 10 A. Teresa Jackson.
 11 Q. Anyone else?
 12 A. Everybody.
 13 Q. Everybody?
 14 A. Yeah.
 15 Q. When would you have these discussions?
 16 A. That varies. That -- it depends.
 17 Q. Did you all arrive to the facility at
 18 the same time?
 19 MR. ANDREWS: Objection.
 20 A. Not all the time. Different times.
 21 Q. Everybody would show up at different
 22 times?
 23 MR. ANDREWS: Objection.
 24 A. Before June 2010, before later than
 25 that, people arrived, like I said, 5:00.

[Page 104]

1 K. Chow
 2 That's the schedule time that they go to.
 3 Q. What about after?
 4 A. After that, they gave them the sheet
 5 telling them the schedule where they going to
 6 report to.
 7 If you're in Manhattan, you're going to
 8 report a little bit later. People that doing
 9 the far routes like Long Island, Connecticut,
 10 and Jersey would report a little bit earlier.
 11 Q. What time?
 12 MR. ANDREWS: Objection.
 13 A. Like 5:00, and they'll get there like
 14 6:00.
 15 Q. When was this?
 16 A. This is like about after June of 2010.
 17 That's like late of 2010 I'm talking about.
 18 Q. You were reporting to the facility at
 19 what time?
 20 MR. ANDREWS: Objection.
 21 A. At 8:00.
 22 Q. At 8:00?
 23 A. Yes.
 24 Q. Would others arrive at 8:00?
 25 MR. ANDREWS: Objection.

[Page 105]

1 K. Chow
 2 A. Like I said, it depends on the route
 3 that they have. If they have a far route, they
 4 would arrive a little bit earlier.
 5 Q. What about later?
 6 Did anyone show up later than 8:00 p.m.?
 7 A. It happens.
 8 Q. Do you know any individuals who showed
 9 up later than 8:00 p.m.?
 10 A. That, I don't really recall.
 11 Q. Did you ever discuss your hours with
 12 other drivers of The Fresh Diet?
 13 A. Only with Mr. Hernandez, Mr. White.
 14 Q. When did you have these discussions?
 15 A. It varies. It varies.
 16 Q. During the time you were performing --
 17 A. Yeah.
 18 Q. -- deliveries?
 19 What would they say about their hours?
 20 What would Mr. Hernandez say about his
 21 hours?
 22 A. His hours that he works, like
 23 fourteen hours a day.
 24 Q. He said that he works fourteen hours a
 25 day?

[27] (Pages 102 to 105)

[Page 106]

1 K. Chow
 2 A. Yes.
 3 Q. Do you remember when he said that?
 4 A. That, I don't recall.
 5 Q. You were showing up to the Brooklyn
 6 facility at 192 Seigel Street around 8:00 p.m.?
 7 MR. ANDREWS: Objection.
 8 A. Yeah, at that time.
 9 Q. In June --
 10 A. Later on.
 11 Q. Late 2010 --
 12 A. Yes.
 13 Q. -- through April 2012?
 14 A. Yes.
 15 Q. You were showing up around 8:00 p.m.?
 16 A. Yes.
 17 Q. Was Mr. Hernandez ever there when you
 18 showed up at 8:00 p.m.?
 19 A. Yes.
 20 Q. Was he always there when you showed up
 21 at 8:00 p.m.?
 22 A. Sometime he may call in and let
 23 Mr. Hussain know if he's running late by text
 24 or phone.
 25 Q. Were others there when you showed up at

[Page 107]

1 K. Chow
 2 8:00 p.m.?
 3 A. Yes.
 4 MR. ANDREWS: I'm sorry. Is
 5 that a yes?
 6 THE WITNESS: Yes.
 7 MR. ANDREWS: You said yes?
 8 THE WITNESS: Yes.
 9 Q. Do you know if others arrived after you
 10 showed up at 8:00 p.m.?
 11 A. That, I don't recall.
 12 Q. They could have?
 13 MR. ANDREWS: Objection.
 14 A. Sometimes.
 15 Q. When you were returning to the facility
 16 to return the bags after your delivery, were
 17 other drivers at the facility already between
 18 June 2010 and April 2012?
 19 A. Yeah, some of them were there. When I
 20 came there, they were there, yes.
 21 Q. Was Mr. Hernandez there?
 22 MR. ANDREWS: Objection.
 23 A. Yes.
 24 Q. What others would have been there?
 25 A. Teresa.

[Page 108]

1 K. Chow
 2 MR. ANDREWS: Objection.
 3 A. David. Cecilia. Marty.
 4 Q. If they were there, is it your
 5 understanding that they would have completed
 6 their deliveries by the time you arrived at the
 7 facility?
 8 MR. ANDREWS: Objection.
 9 A. Yeah, because they left early in the
 10 facility because they have a longer route.
 11 MR. POLLACK: I think now's a
 12 good time for a break.
 13 MR. ANDREWS: Should we break
 14 for lunch?
 15 MR. POLLACK: Yes.
 16 (Whereupon, a luncheon recess
 17 was taken from 12:29 p.m. to 1:06 p.m.)
 18 Q. Do you have any documents evidencing the
 19 hours you worked for Late Night?
 20 MR. ANDREWS: Objection.
 21 A. No.
 22 Q. I think you testified earlier that in
 23 addition to performing deliveries, you did
 24 other work for Late Night; is that correct?
 25 A. Could you rephrase it?

[Page 109]

1 K. Chow
 2 Q. Did you perform any other work for
 3 Late Night besides performing meal deliveries?
 4 A. Only four months. After that, I devoted
 5 full-time to Fresh Diet.
 6 Q. What was that?
 7 A. I just only -- my contract with
 8 Cruise Planners was terminated as May of 2009,
 9 so I could devote my full-time job with
 10 The Fresh Diet.
 11 MR. ANDREWS: Kenny,
 12 Mr. Pollack's question was, besides
 13 delivering meals, did you do any other
 14 work for The Fresh Diet.
 15 A. Oh, no.
 16 Q. You had a contract with Cruise Planners?
 17 A. Yeah, a franchise contract.
 18 Q. I'm going to ask you to produce a copy
 19 of that agreement.
 20 That Cruise Planners terminated in
 21 May 2009?
 22 A. Yes.
 23 Q. Is that when you stopped doing work for
 24 Cruise Planners?
 25 A. Yes.

[28] (Pages 106 to 109)

[Page 110]

1 K. Chow
 2 Q. Did you ever stop doing work for
 3 Mitchell's?
 4 A. Yeah, I did stop doing work.
 5 Q. When?
 6 A. That was in December of 2008.
 7 Q. Did you perform work for anyone else
 8 between May 2009 and April 2012?
 9 A. No.
 10 Q. What did you do during the daytime?
 11 A. I sleep.
 12 Q. The only income you received from
 13 May 2009 through April 2012 was for the work
 14 you performed for The Fresh Diet?
 15 A. Yes.
 16 Q. When would you sleep?
 17 A. It varies, like early to late mornings.
 18 Q. What is the earliest you would be
 19 asleep?
 20 A. 9:00.
 21 Q. What time would you normally wake up?
 22 A. Until like 3:00.
 23 Q. 3:00 p.m.?
 24 A. (Witness nods head.)
 25 Q. 9:00 a.m. to 3:00 p.m.?

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1 K. Chow
 2 assignments were received from Defendant
 3 Hussain, and the New York City area drivers had
 4 to do the work they had been assigned."
 5 Do you see that?
 6 A. Yes.
 7 Q. Who were the New York City area drivers
 8 you were referring to in that paragraph?
 9 A. Myself.
 10 Q. Anybody else?
 11 A. Mr. Hernandez.
 12 Q. Anybody else?
 13 A. Mr. Guzman.
 14 Q. Who?
 15 A. Mr. Guzman.
 16 MR. ANDREWS: Guzman.
 17 Q. Who is that?
 18 A. Juany Guzman.
 19 Q. Is there anybody else?
 20 I don't want to have to ask anybody
 21 else.
 22 Can you list them all, or are those the
 23 only people you're referring to?
 24 MR. ANDREWS: Take your time,
 25 and list as many as you can remember.

[Page 111]

1 K. Chow
 2 A. Yes.
 3 MR. ANDREWS: Objection.
 4 Q. What would you do when you woke up?
 5 A. Getting dressed, get ready to work.
 6 Q. How far did you live from the 192 Seigel
 7 Street location?
 8 A. I'd say it's about a half an hour
 9 commute.
 10 Q. Driving?
 11 A. Yeah, driving.
 12 Q. Half hour?
 13 A. Half hour.
 14 Q. What about the Baltic location?
 15 A. About like twenty-five minutes.
 16 Q. Driving?
 17 A. Driving.
 18 Q. What about the New Jersey location?
 19 A. Depending on traffic, it can take up to
 20 one hour to two hours.
 21 Q. What about Connecticut?
 22 A. Two to three hours.
 23 Q. Turning your attention back to
 24 Defendant's Exhibit 26, being your affidavit,
 25 looking at paragraph 10B, it says, "All

[Page 113]

1 K. Chow
 2 A. Nafis, Uncle, Syed's Uncle, Nazrul,
 3 Islam, Owen Dacres, that's it.
 4 Q. When you said "New York City area
 5 drivers," what did you mean by that?
 6 A. Manhattan, Brooklyn, Queens,
 7 Long Island.
 8 Q. The individuals you had just listed
 9 before are people who delivered to those
 10 locations?
 11 A. The people I listed are all only
 12 Manhattan drivers.
 13 Q. Just Manhattan?
 14 A. Manhattan.
 15 Q. Do you know how they were paid?
 16 A. Yes. I get paid \$4.
 17 Q. Do you know how they were paid?
 18 A. Per stop.
 19 Q. Do you know if they were paid \$4 per
 20 stop?
 21 A. That, I know for myself. I get paid \$4
 22 per stop.
 23 Q. When you said that they had to do the
 24 work they had been assigned, what did you mean?
 25 A. Each time I report to get an assignment,

[29] (Pages 110 to 113)

[Page 114]

1 K. Chow
 2 I report to Mr. Hussain. When I first started
 3 with Fresh Diet, Mr. Hussain would tell me that
 4 I would be covering the weekend route doing his
 5 route and doing Nafis' route.

6 Q. In paragraph 10B, it appears as though
 7 you're referring to people other than yourself,
 8 is that true?

9 MR. ANDREWS: Objection.

10 A. Could you rephrase it?

11 Q. It says, "All assignments were received
 12 by Defendant Hussain, and the New York City
 13 area drivers had to do the work they had been
 14 assigned."

15 A. Yes, it's true.

16 Q. What does that mean?

17 A. It means they given a route, like a
 18 separate route, for Mr. Hussain where they
 19 assigned to.

20 Q. What does it mean by they "had to do the
 21 work"?

22 A. Had to do the work. That means that
 23 they given an assignment to do for that day.

24 If they don't finish or they running late, they
 25 must call Mr. Hussain to request any help or

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1 K. Chow
 2 my car break down, I would let Mr. Hussain
 3 know.

4 Q. Do you know any others, other than
 5 yourself, who had called and said that they
 6 were not available to perform a delivery?

7 A. That, I do not know.

8 Q. If you ever called in sick, what would
 9 you do?

10 A. There's a policy where we have to call
 11 in early in the afternoon to let Mr. Hussain
 12 know or text him to let him know that I would
 13 not be able to come in to work for that night.

14 Q. There were instances when that happened?

15 A. It happens.

16 Q. When would that happen?

17 MR. ANDREWS: Objection.

18 A. If your car breaks down and you unable
 19 to find alternative car to use to do the route.

20 Q. How many times would you say that
 21 happened between November 2008 and April 2012?

22 A. That, I do not know. I cannot give a
 23 specific number.

24 Q. Can you give an estimate?

25 MR. ANDREWS: Objection.

[Page 115]

1 K. Chow
 2 coverage.
 3 Q. If they weren't available or if they
 4 couldn't do the work, they had to call
 5 Mr. Hussain to request coverage, is that what
 6 your testimony is?

7 MR. ANDREWS: Objection.

8 A. They have to call Mr. Hussain and let
 9 him know that they will not be able to make it
 10 to work so Mr. Hussain will be able to find
 11 available coverage for other drivers to cover
 12 two routes.

13 Q. Do you remember any time when that
 14 actually happened?

15 A. It happens many times.

16 Q. Did Mr. Hernandez ever call and say I'm
 17 not available to cover a route?

18 MR. ANDREWS: Objection.

19 A. That, I do not know.

20 Q. Who do you know that that happened to?

21 A. It happens to myself.

22 Q. You had called and said that you're not
 23 available to cover a route on a particular
 24 night?

25 A. Yeah. If I'm calling in if I'm sick or

[Page 117]

1 K. Chow
 2 A. That, I cannot provide.
 3 Q. You do recall that it actually happened
 4 on at least one occasion?

5 A. Yes.

6 Q. Did you receive routes after that?

7 MR. ANDREWS: Objection.

8 A. Yes. When I go report in the next day,
 9 Mr. Hussain will give me a route.

10 Q. Were you paid for that night?

11 A. No, I did not get paid.

12 Q. Do you know what would happen to any
 13 New York City area driver if they did not do
 14 the work they had been assigned?

15 MR. ANDREWS: Are you directing
 16 him to the document?

17 MR. POLLACK: No. I'm asking
 18 him a question.

19 A. Could you rephrase it? I'm sorry.

20 Q. Do you know what would happen to any
 21 New York City area driver if they did not do
 22 the work they had been assigned?

23 A. Mr. Hussain would discipline them up
 24 including termination.

25 Q. How would they be disciplined?

[30] (Pages 114 to 117)

[Page 118]

1 K. Chow
2 A. He would like see them or call them over
3 the phone or tell them to see them in person.
4 Q. Do you remember any specific instance
5 where that happened?
6 A. That, it happens in a meeting.
7 Q. What meeting?
8 A. The driver meeting.
9 Q. How many meetings were there?
10 A. That, I could not recall, but it were
11 numerous meetings.
12 Q. What would Mr. Hussain do during that
13 meeting if a New York City area driver did not
14 do the work they had been assigned?
15 A. The policy is that you will get a
16 warning and, like I said, disciplined up to
17 including termination.
18 Q. What do you mean by "disciplined"?
19 A. Cut your route, reduce your route.
20 Q. Did that ever happen to you?
21 A. No.
22 Q. Did that ever happen to any other driver
23 of Late Night?
24 MR. ANDREWS: Objection.
25 A. That, I do not know.

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1 K. Chow
2 Q. You do not know?
3 A. (Witness shakes head.)
4 Q. Can you verbally answer the question?
5 A. No.
6 Q. Were there ever written warnings?
7 A. No written warnings.
8 Q. Do you ever recall a verbal warning?
9 A. Yes.
10 Q. By who?
11 A. Mr. Hussain.
12 Q. To who?
13 A. To me.
14 Q. What would he say?
15 A. He say the next time if you doing
16 something without my permission, I'm going to
17 cut your route.
18 Q. What would you say in response?
19 A. I say okay.
20 Q. What did you ever do without his
21 permission?
22 A. Adding stops from other drivers if they
23 need help, adding stop without letting him know
24 that they running late.
25 Q. "Adding stops from other drivers," what

[Page 120]

1 K. Chow
2 does that mean?
3 A. Like getting extra stops from other
4 drivers from other routes.
5 Q. You would take one of their stops?
6 MR. ANDREWS: Objection.
7 A. Yes.
8 Q. You would take one of their stops?
9 A. Yes.
10 Q. How would you do that?
11 A. Oh, just meet up in person.
12 Q. You would take the meal bag from their
13 car?
14 A. Yes.
15 Q. How would you know where to deliver it?
16 A. It has it on the menu. The bags have
17 the menu.
18 Q. Who did you ever take a meal from to
19 deliver for them?
20 A. Mostly Nafis.
21 Q. Anyone else?
22 A. That's what I only know, Nafis.
23 Q. Was this when you were delivering in
24 Manhattan?
25 A. Yeah, Manhattan and New Jersey.

[Page 121]

1 K. Chow
2 Q. Did you ever tell Mr. Hussain that you
3 took Nafis' delivery?
4 A. Yes, I would tell him.
5 Q. When?
6 A. After he gave me a warning.
7 Q. How did he know to give you the warning?
8 MR. ANDREWS: Objection.
9 A. That, I do not know.
10 Q. How often would you take meals from
11 other drivers to deliver for them?
12 A. That, I do not know. That -- once in a
13 while.
14 Q. Looking at paragraph 10C on
15 Defendant's 26, when it says "New York City
16 area drivers," are you referring to those same
17 drivers that you were referring to in response
18 to paragraph B?
19 A. No. You're talking about Connecticut,
20 Westchester, Jersey, Long Island, and the five
21 boroughs.
22 Q. It says that all New York City area
23 drivers had to report to Defendant Hussein at
24 the beginning and end of each shift that they
25 worked.

[31] (Pages 118 to 121)

[Page 122]

1 K. Chow
 2 Do you see that sentence?
 3 A. Yes.
 4 Q. Who were you referring to?
 5 A. I'm referring to myself.
 6 Q. Besides yourself.
 7 A. Other drivers that working in the
 8 tri-state area have to report to Mr. Hussain at
 9 the beginning at the end of the route.
 10 Q. How do you know that?
 11 A. It's by the schedule.
 12 Q. How do you know that they had to report
 13 to Mr. Hussain?
 14 A. By the schedule.
 15 Q. Looking at the next sentence, it says,
 16 "At the end of their shifts, all New York City
 17 area drivers had to report how many meals they
 18 had delivered, how many miles they had driven,
 19 and how many stops they had made."
 20 Do you see that sentence?
 21 A. Yes.
 22 Q. How do you know that?
 23 A. Text message. I send a text message to
 24 Mr. Hussain.
 25 Q. What about others other than yourself?

[Page 123]

1 K. Chow
 2 A. I only know for myself that I send a
 3 text message.
 4 Q. You don't know what others did?
 5 A. No.
 6 MR. ANDREWS: Objection.
 7 Q. It says that, the next sentence, they
 8 also had to return empty bags.
 9 Do you see that?
 10 A. Yes.
 11 Q. How do you know that?
 12 A. I come back at end of the night. I
 13 return to the facility, drop the bags. I would
 14 see other drivers.
 15 Q. The next sentence says that New York
 16 City area drivers who did not comply with these
 17 requirements were subject to discipline up to
 18 and including termination.
 19 Do you see that sentence?
 20 A. Yes.
 21 Q. How do you know that?
 22 A. Meetings.
 23 Q. What would happen during these meetings?
 24 MR. ANDREWS: Objection.
 25 A. Mr. Hussain will stress telling the

[Page 124]

1 K. Chow
 2 drivers if you don't follow instructions, this
 3 is what you going to get penalized for.
 4 Q. Did he explain what penalized meant?
 5 A. Yeah, give you a warning.
 6 Q. The next subparagraph on Defendant's 26,
 7 being 10D, says, first sentence, "All New York
 8 City area drivers were expected to report to
 9 work at specific times."
 10 Do you see that sentence?
 11 A. Yes.
 12 Q. How do you know that?
 13 A. By the schedule created.
 14 Q. Did you see others' schedules?
 15 A. I see other schedule for other drivers
 16 on the list.
 17 Q. What were the specific times that
 18 New York City area drivers were expected to
 19 report to work?
 20 MR. ANDREWS: Objection.
 21 A. Only thing I know for myself, I report
 22 to work at 8:00 p.m. subject to mandatorial
 23 changes (sic).
 24 Q. When are you referring to?
 25 A. Could you rephrase it again? I'm sorry.

[Page 125]

1 K. Chow
 2 Q. At what point during the time you
 3 performed work were you expected to report to
 4 work at 8:00 p.m. between November 2008 and
 5 April 2012?
 6 A. After June of 2010. That's the point.
 7 Q. Through April 2012?
 8 A. Yeah.
 9 Q. You don't know when other New York City
 10 area drivers were expected to report to work?
 11 A. No, that, I do not know.
 12 Q. It says in the next sentence, "The
 13 schedules were created by Defendant Hussain."
 14 Do you see that?
 15 A. Yes.
 16 Q. He created the schedules?
 17 A. Yes.
 18 Q. Are the schedules the same as manifests?
 19 A. They different.
 20 Q. What would be on a schedule?
 21 A. Name, route, time to report.
 22 Q. Referring back to Defendant's
 23 Exhibit 27, is that a schedule or a manifest?
 24 A. This is a manifest.
 25 Q. Referring to Defendant's Exhibit 28, is

[32] (Pages 122 to 125)

[Page 126]

1 K. Chow
 2 that a schedule or a manifest?
 3 A. That is a manifest.
 4 Q. Referring to Defendant's 29, schedule or
 5 a manifest?
 6 A. It's a manifest.
 7 MR. ANDREWS: Objection.
 8 It's a very lengthy document.
 9 The witness has not seen every page of
 10 it.
 11 MR. POLLACK: He produced it.
 12 He should have seen every page.
 13 Q. The next sentence on 10D of Defendant's
 14 26 says, "New York City area drivers could not
 15 decide when to show up for work."
 16 Do you see that sentence?
 17 A. Yes.
 18 Q. How do you know that?
 19 A. Meetings and texts.
 20 Q. They were told when to show up for work?
 21 MR. ANDREWS: Objection.
 22 A. Only I know when I have to show up at
 23 work. For others, I do not know.
 24 Q. You do not know whether others could or
 25 could not decide when they could show up to

[Page 127]

1 K. Chow
 2 work?
 3 A. That, I do not know.
 4 MR. ANDREWS: Objection.
 5 Q. The next sentence says, "If they did not
 6 arrive to work at the assigned times, they were
 7 subject to discipline up to and including
 8 termination."
 9 Do you see that sentence?
 10 A. Yes.
 11 Q. How do you know that?
 12 A. I know it for myself. If I don't give
 13 advanced notice to Mr. Hussain that whether or
 14 not I be running late or not able to show to
 15 work before -- before 5:00 p.m. that he will
 16 give me a warning.
 17 Q. Which later became 8:00 p.m. in
 18 June 2010?
 19 MR. ANDREWS: Objection.
 20 A. Yes.
 21 Q. That sentence says that if "they" did
 22 not arrive to work at the assigned times,
 23 "they" were subject to discipline up to and
 24 including termination.
 25 Who is the "they" you are referring to

1 K. Chow
 2 in that paragraph?
 3 A. The drivers.
 4 Q. Do you know if anyone other than
 5 yourself was disciplined for not showing up to
 6 work at an assigned time?
 7 MR. ANDREWS: Objection.
 8 A. That, I do not know.
 9 Q. Moving on to subparagraph E of paragraph
 10 10, Defendant's 26, it says, "None of the New
 11 York City area drivers was at liberty to choose
 12 their assignments."
 13 Do you see that paragraph?
 14 A. Yes.
 15 Q. How do you know that?
 16 A. I ask Mr. Hussain. Mr. Hussain would
 17 decide whether or not I get to choose the
 18 assignment at his own discretion.
 19 Q. What about others besides you?
 20 A. That, I do not know.
 21 Q. Then that paragraph goes on to say,
 22 "They could not refuse to do the work that they
 23 were assigned."
 24 Do you see that?
 25 A. Yes.

[Page 129]

1 K. Chow
 2 Q. How do you know that?
 3 A. For myself. I know for myself that if
 4 you refuse work, Mr. Hussain would threaten to
 5 take action by cutting your route saying that
 6 you can't handle this route.
 7 Q. What about others besides you?
 8 A. Just like by the meetings.
 9 Q. At the meetings, there was a discussion
 10 of who got to choose the assignment of routes?
 11 A. No.
 12 Q. Next subparagraph, F, of paragraph 10
 13 says, "All New York City area drivers had to
 14 complete the routes that they had been assigned
 15 and to report back to defendant Hussain."
 16 Do you see that sentence?
 17 A. Yes.
 18 Q. How do you know that?
 19 A. Meetings and texts.
 20 Q. Next sentence says, "If they failed to
 21 complete their assigned routes or if they
 22 missed an assigned stop, they were subject to
 23 discipline up to and including termination."
 24 Do you see that sentence?
 25 A. Yes.

[33] (Pages 126 to 129)

[Page 130]

1 K. Chow
 2 Q. Do you know if any other driver besides
 3 you failed to complete their assigned route?
 4 MR. ANDREWS: Objection.
 5 A. I do not know. I know for myself I got
 6 dock.
 7 Q. Docked how?
 8 A. Missed deliveries.
 9 Q. What do you mean by "docked"?
 10 A. I got deducted \$25 for each missed
 11 delivery.
 12 Q. When did that happen?
 13 A. That happen like around -- like late in
 14 2008, around December.
 15 Q. Before you were full-time?
 16 MR. ANDREWS: Objection.
 17 A. Yes, and even after that too.
 18 Q. Besides you, do you know if any other
 19 drivers were disciplined for failing to
 20 complete their assigned routes?
 21 A. That, I do not know.
 22 Q. Besides you, do you know if any other
 23 drivers were disciplined for missing an
 24 assigned stop?
 25 A. That, I do not know.

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1 K. Chow
 2 Q. Next subparagraph, G, paragraph 10,
 3 Defendant's 26, says, "Defendant Hussain can
 4 change drivers' schedules and reduce or
 5 increase assignments at his complete discretion
 6 without advanced notice to the New York City
 7 area drivers."
 8 Do you see that sentence?
 9 A. Yes.
 10 Q. How do you know that?
 11 A. Like I said, if the route got too big,
 12 I -- where things that you not going to be able
 13 to complete on time, he would decide on his own
 14 discretion to split the route.
 15 Q. When did that happen?
 16 A. It happens in 2010, after June of 2010.
 17 Q. Did that happen to you?
 18 A. Yes.
 19 Q. When did that happen?
 20 A. That, I do not recall.
 21 Q. What happened?
 22 MR. ANDREWS: Objection.
 23 A. At that time, they had new clients.
 24 They couldn't keep up with the demand. During
 25 that month of 2010, Mr. Hussain was on

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1 K. Chow
 2 vacation. The kitchen experienced a freezer
 3 problem where ice wasn't frozen, and also,
 4 there weren't enough bags to deal with demand.
 5 Q. The next subparagraph, which is
 6 subparagraph H of paragraph 10 in Defendant's
 7 26, says, "All New York City area drivers
 8 performed the same type of work."
 9 Do you see that?
 10 A. Yes.
 11 Q. Describe the type of work you're
 12 referring to in that paragraph.
 13 A. They're delivery drivers.
 14 Q. Can you elaborate?
 15 A. They drive own vehicles to make delivery
 16 for Fresh Diet clients.
 17 Q. Do you know if they were all paid the
 18 same compensation?
 19 A. That, I do not know.
 20 Q. How do you know that everyone performed
 21 the same type of work?
 22 A. It says it on the contract. It says
 23 city route get paid -- get compensated based on
 24 how much per stop, miles depending where the
 25 route they going to. If they doing a longer

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1 K. Chow
 2 route, they get per mile and per stop.
 3 Q. Did you see anyone else's contracts
 4 besides yours?
 5 A. I only see my own contract.
 6 Q. The sentence goes on to say, "That is,
 7 each one showed up to The Fresh Diet, Inc.'s
 8 Brooklyn facility at his or her assigned time,
 9 each would receive his route assignment for his
 10 shift, each would take the food that was
 11 prepared in the kitchen, by the kitchen staff,
 12 and then deliver it."
 13 Do you see that?
 14 A. Yes.
 15 Q. Is that the same type of work you're
 16 referring to in the proceeding sentence?
 17 A. Yes, it's the same proceeding work.
 18 Q. That's an accurate statement?
 19 A. Yes.
 20 Q. The next subparagraph, subparagraph I,
 21 of paragraph 10 says, "The work was completely
 22 standardized. All drivers had to deliver the
 23 food in the same exact way, each meal had to be
 24 delivered in a bag provided by The Fresh Diet,
 25 Inc., and drivers then had to return to the

[34] (Pages 130 to 133)

[Page 134]

1 K. Chow
 2 Brooklyn facility."
 3 Do you see that?
 4 A. Yes.
 5 Q. How do you know that drivers had to
 6 return to the Brooklyn facility?
 7 A. Meetings, texts, sign-in sheets.
 8 Q. Do you know if every driver did actually
 9 return to the facility after completing their
 10 assigned route?
 11 MR. ANDREWS: Objection.
 12 A. Only know for myself.
 13 Q. Next subparagraph, J, says, "New York
 14 City area drivers could not arrange with one
 15 another to change their assignments without
 16 those changes being authorized in advanced by
 17 Defendant Hussain."
 18 Do you see that?
 19 A. Yes.
 20 Q. How do you know that?
 21 A. Because Mr. Hussain personally spoke to
 22 me and told me that if you decide to change
 23 without my permission, I'm going to cut your
 24 route.
 25 Q. Do you know if others ever arranged with

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1 K. Chow
 2 one another to change their assignments?
 3 A. That, I do not know.
 4 Q. Next subparagraph, K, says, "New York
 5 City area drivers who attempted to change their
 6 assignments without first obtaining Defendant
 7 Hussain's approval were subject to discipline
 8 up to including termination."
 9 Do you see that?
 10 A. Yes.
 11 Q. Which New York City drivers ever
 12 attempted to change their assignments?
 13 MR. ANDREWS: Objection.
 14 A. I say myself.
 15 Q. Did you ever attempt to change your
 16 assignment?
 17 MR. ANDREWS: Objection.
 18 A. That, I do not know.
 19 Q. Do you know if any other driver ever
 20 attempted to change their assignment without
 21 first obtaining Mr. Hussain's approval?
 22 A. That, I do not know.
 23 Q. Moving on to paragraph 11, it says, "In
 24 addition to myself, I am aware and have
 25 personal knowledge that the defendants employed

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1 K. Chow
 2 many other similarly situated drivers and/or
 3 food delivery employees and routinely failed to
 4 pay them overtime compensation of one and
 5 one-half times their regular rates for those
 6 hours that they worked in excess of forty per
 7 week."
 8 Do you see that?
 9 A. Yes.
 10 Q. How do you know that?
 11 A. I know for myself I work six days a week
 12 between twelve to fourteen hours a day.
 13 Q. What were those hours?
 14 A. Like I said, from 5:00 to 7:00.
 15 Q. When were you working from 5:00 to 7:00?
 16 A. From November 2008 through April 2012.
 17 Q. Did there come a time you started
 18 working at 8:00 p.m.?
 19 A. I was making manifests for the Manhattan
 20 drivers off the clock.
 21 Q. When?
 22 A. Since then, I've been -- that's around
 23 January of 2011.
 24 Q. What were you doing to prepare
 25 manifests?

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1 K. Chow
 2 A. Oh, in case if driver call out for
 3 Manhattan and Mr. Hussain needs coverage, he
 4 needs me to help split the route so each people
 5 get a little amount of stops to cover that
 6 route.
 7 Q. You were preparing manifests?
 8 A. Yes.
 9 Q. Where?
 10 A. At home.
 11 Q. On your computer?
 12 A. Yes.
 13 Q. For other drivers?
 14 A. For other drivers, other Manhattan
 15 drivers.
 16 Q. Who were you preparing manifests for?
 17 A. Nafis, Fernando, Juany, Naz, Uncle,
 18 transit guys.
 19 Q. You were preparing their manifests?
 20 A. Yes.
 21 Q. How often were you preparing their
 22 manifests?
 23 A. Almost every day. Six days a week.
 24 Q. How would they get their manifests?
 25 A. E-mail.

[35] (Pages 134 to 137)

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1 K. Chow

2 Q. What e-mail address would you use?

3 A. I used my own personal e-mail address

4 and send it to Syed Hussain's Fresh Diet e-mail

5 address.

6 Q. How long did it take you to prepare a

7 manifest?

8 A. Three hours.

9 Q. Every day, it took three hours?

10 MR. ANDREWS: Objection.

11 A. Yes.

12 Q. Did the manifests change every day?

13 A. Yes, it changed every day.

14 Q. Why?

15 A. Because sometimes clients don't eat

16 their food. Sometimes they eat in and out.

17 Q. How would you know what to put in a

18 manifest?

19 A. Oh, Mr. Hussain gave me his permission

20 to use his Fresh Diet account, client account,

21 to go access to the client, what change they

22 made at the last minute.

23 Q. Were you in touch with clients?

24 A. No. I just download the list.

25 Q. What's in a manifest?

1 K. Chow
2 MR. ANDREWS: Objection.
3 A. It only show the time stamp when I
4 finish preparing the manifest and send it to
5 Mr. Hussain's account, e-mail account.
6 Q. Is it your testimony that you performed
7 work from 5:00 p.m. to 7:00 a.m. every day you
8 performed work for The Fresh Diet or Late Night
9 from November 2008 to April 2012?
10 A. Yes.
11 Q. Fourteen hours?
12 A. Yes.
13 Q. Every day?
14 A. Yes.
15 MR. POLLACK: I need to take a
16 quick break.
17 (Whereupon, a recess was taken
18 at this time.)
19 Q. You just testified that you worked
20 fourteen hours a day every day, correct?
21 A. Correct.
22 Q. From 5:00 p.m. to 7:00 a.m., correct?
23 A. (Witness nods head.)
24 MR. ANDREWS: Objection.
25 Q. In about June 2010, you had previously

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[Page 141]

1 K. Chow
2 A. Client name, address, phone numbers.
3 Q. Did the clients change day to day?
4 A. Yes.
5 Q. Every day there was a different --
6 MR. ANDREWS: Objection.
7 A. Sometimes, depending what they order.
8 We don't know at least three days ahead
9 of time.
10 Q. To prepare the manifests, would you have
11 to log in with Syed's information?
12 A. Oh, of course. Correct.
13 Q. Did you have software downloaded on your
14 computer?
15 A. No. It just like a web browser.
16 Q. You did this from your home?
17 A. Yes.
18 Q. Do you still have the computer that you
19 did this from?
20 A. Yes.
21 Q. Did you produce that to your attorney?
22 A. I sent a few.
23 Q. Would that contain a log-in time that
24 you went into the software to prepare the
25 manifest?

1 K. Chow
2 testified that you started reporting to work at
3 about 8:00 p.m. to the facility, correct?
4 A. After that, they gave me a schedule.
5 Q. Around fall 2010?
6 A. Yes, late 2010, fall.
7 Q. When did you start preparing manifests?
8 A. June -- January of 2011.
9 Q. What were you doing for The Fresh Diet
10 from 5:00 p.m. to 8:00 p.m. between June 2010
11 to January 2011?
12 A. Mr. Hussain may call me over the phone
13 telling me to help him out to be like an acting
14 manager in case Mr. Hussain goes on vacation.
15 Q. Do you know if Mr. Hussain went on
16 vacation between June 2010 and January 2011?
17 A. Yes, he did when I -- a month, I think,
18 in June of 2010, that time. June or July.
19 Q. What did you do during that time?
20 A. I was an acting manager.
21 Q. Where was Owen Dacres at that time?
22 A. He wasn't there yet.
23 Q. What about from September 2010 to
24 December 2010?
25 A. Mr. Hussain got a permanent job as a

[36] (Pages 138 to 141)

[Page 142]

1 K. Chow
 2 regional delivery manager, and I got a
 3 permanent route from him.
 4 Q. How do you know the hours that other
 5 drivers worked for Late Night?
 6 A. I see them every day --
 7 MR. ANDREWS: Objection.
 8 A. -- at work.
 9 Q. How do you know the hours that they
 10 worked?
 11 A. I would arrive like 5:00 p.m. I still
 12 see like a few drivers still over there waiting
 13 for the food to be done.
 14 Q. Like who?
 15 A. Like Teresa.
 16 Q. Who else?
 17 A. Marty.
 18 Q. List them all.
 19 A. David, Bryant, Fernando.
 20 Q. Do you know the hours they worked?
 21 A. Like I said, when I come in at
 22 5:00 p.m., this is what -- I know they came in
 23 before me.
 24 Q. Are we talking about in Brooklyn or
 25 before Brooklyn?

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1 K. Chow
 2 A. In Brooklyn.
 3 Q. At some point, you started arriving at
 4 8:00 p.m. in Brooklyn; is that correct?
 5 A. Yeah, when they have a schedule, but
 6 before I did that, we didn't have a schedule.
 7 Q. You did start reporting to work around
 8 8:00 p.m. around, what was it, June 2010?
 9 A. Late of 2010, like fall.
 10 Q. Fall?
 11 A. (Witness nods head.)
 12 Q. Around fall of 2010, do you know that
 13 hours that other drivers were working?
 14 A. Yes. Teresa -- it's based on the
 15 schedule. Teresa would be coming to work at
 16 around 5:00.
 17 Q. You saw her schedule?
 18 A. It's on the schedule, yes.
 19 Q. Do you know what time she finished her
 20 deliveries?
 21 MR. ANDREWS: Objection.
 22 A. That, I do not know because it varies.
 23 Q. Do you know when all drivers finished
 24 their deliveries?
 25 A. Yeah, because when they come back at the

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1 K. Chow
 2 end of the facility each night, when they start
 3 instituting that policy, I come in to drop the
 4 bags and ice. I would know when the driver
 5 would come back.
 6 Q. How would you know?
 7 A. Like I said, on the -- on the -- on the
 8 clock, the cell phone clock.
 9 Q. What cell phone clock?
 10 A. Like time stamp on the text.
 11 Q. Whose texts?
 12 A. My texts. I send it to Syed's text
 13 telling him what time I finished.
 14 Q. What about other drivers?
 15 A. Other drivers?
 16 Q. Yes.
 17 A. The only thing I know that when I come
 18 in, I know drivers already there.
 19 Q. Are we talking about when you come in
 20 from returning deliveries?
 21 A. From returning deliveries.
 22 Q. At the end of the route?
 23 A. I'm talking about the facility.
 24 Q. There were certain drivers that were
 25 already at the facility when you returned?

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1 K. Chow
 2 A. Yes.
 3 Q. Like who?
 4 A. I would say Errol Graham.
 5 Q. Anyone else?
 6 A. Alex. Alex. What's his last name?
 7 Mexican Alex. Oh, Ruiz, R-U-I-Z.
 8 Q. Were those the only two that would be
 9 there when you returned?
 10 MR. ANDREWS: Objection.
 11 A. Yeah.
 12 Q. Any others?
 13 A. Joe Tate.
 14 Q. Were you the fourth driver who would
 15 arrive back to the facility at the end of a
 16 route?
 17 MR. ANDREWS: Objection.
 18 A. No. I would be like the last arriving
 19 late.
 20 Q. You would be the last?
 21 A. (Witness nods head.)
 22 Q. You would be the last to finish your
 23 route?
 24 MR. ANDREWS: Objection.
 25 A. Not all the time.

[37] (Pages 142 to 145)

[Page 146]

1 K. Chow
 2 Q. Do you know if any others showed up
 3 after you?
 4 A. Yes, Nafis.
 5 Q. Would Fernando be done before you?
 6 A. Sometimes.
 7 Q. Juany?
 8 A. Sometimes.
 9 Q. They'd be at the facility when you
 10 returned?
 11 MR. ANDREWS: Objection.
 12 A. Sometimes.
 13 Q. Would you know when they finished their
 14 route if they were already at the facility when
 15 you returned?
 16 A. Like I said, the only -- like I said,
 17 I -- when I come in to drop the bag, if I see
 18 these people, I see it when they put it in the
 19 sign-in sheet.
 20 Q. Which means that they were already
 21 there, that they had already finished their
 22 route by the time you returned, correct?
 23 A. Yeah.
 24 They come back, and they do a sign-in
 25 sheet where they are required to put in the

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1 K. Chow
 2 time when they arrive and had to do at the end
 3 of the route to send that photo to Mr. Hussain
 4 so he could record it on his end of it what
 5 time these driver left, what time these driver
 6 arrive, how many bags they pick up.
 7 Q. Did you see any other driver's paycheck
 8 besides yours?
 9 A. Oh, Fernando.
 10 Q. When did you see Fernando's paycheck?
 11 A. Once in a while. Every week if he's
 12 going to complain to me that he have shortage
 13 on his check.
 14 Q. Do you know if any driver worked more
 15 than forty hours per week?
 16 A. Teresa.
 17 Q. How do you know that?
 18 A. Because she start based on a schedule.
 19 She comes in to work at 5:00. She doesn't
 20 finish her job until 4:00.
 21 Q. 5:00 p.m. to 4:00 a.m.?
 22 A. In Connecticut, and she still have to
 23 drive down to do the Brooklyn facility. That's
 24 another hour too.
 25 Q. Do you mean that she was done with

1 K. Chow
 2 deliveries at 4:00 a.m. --
 3 A. Yeah.
 4 Q. -- and then she still had to drive back
 5 to the Brooklyn facility?
 6 A. Right.
 7 Q. Is it your testimony that Teresa's
 8 schedule was 5:00 p.m. to 4:00 a.m.?
 9 MR. ANDREWS: Objection.
 10 A. Yeah.
 11 At the last stop for Connecticut is
 12 4:00 a.m., and she still got to drive down to
 13 Brooklyn.
 14 Q. What about other drivers' hours?
 15 A. Errol, same thing. Usually gets there
 16 like around 5:30 through like 3:00.
 17 Q. 5:30 p.m. to 3:00 a.m.?
 18 A. Yes.
 19 Q. Any other drivers?
 20 A. Nafis.
 21 Q. What were his hours?
 22 A. His hours would be like 7:00 p.m. to
 23 7:00 a.m.
 24 Q. Any others?
 25 A. Juany, 6:00 a.m. -- no. 6:00 p.m. to

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1 K. Chow
 2 4:00 p.m. 4:00 a.m.
 3 Q. Any others?
 4 A. That's it.
 5 Q. You don't know the hours that Fernando
 6 worked?
 7 MR. ANDREWS: Objection.
 8 A. Fernando, like I said, he's -- like
 9 7:00 p.m. to 7:00 a.m.
 10 Q. Do you know how many days a week these
 11 individuals worked?
 12 A. Six days a week.
 13 MR. ANDREWS: Objection.
 14 Q. Six days a week?
 15 A. (Witness nods head.)
 16 Q. Every one of them?
 17 A. Yes.
 18 Q. Did Fernando tell you how many hours he
 19 worked yesterday during your telephone
 20 conversation with him?
 21 MR. ANDREWS: Objection.
 22 A. He mentioned about working about
 23 fourteen to sixteen hours.
 24 Q. He said that yesterday during your
 25 telephone conversation?

[38] (Pages 146 to 149)

[Page 150]

1 K. Chow
 2 A. Yes.
 3 Q. Did he tell you to tell me that
 4 information?
 5 MR. ANDREWS: Objection.
 6 A. No.
 7 Q. How did it come up during your
 8 conversation with him yesterday that he worked
 9 fourteen to sixteen hours?
 10 A. It's based on at the old kitchen at
 11 192 Seigel plus, also, 588 Baltic.
 12 Q. What were you discussing that his
 13 working fourteen to sixteen hours per day --
 14 A. Oh, we have to wait for the food.
 15 Sometimes the food are not packed, we don't
 16 have enough bags, freezer breaks down, we have
 17 to pack our own food, pack our own ice packs
 18 into the bag, lock it, zip tie it, sort it,
 19 sort it by manifest based on the order and load
 20 it up and start doing deliveries.
 21 Q. He discussed this with you yesterday
 22 during your telephone conversation?
 23 MR. ANDREWS: Objection.
 24 A. Yes.
 25 Q. Looking at paragraph 12 of Defendant's

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1 K. Chow
 2 William Paredes, Jimmi Perez, Brijesh Ram,
 3 Carlos Rijos, Jose Ruiz and the other Ruiz as
 4 well too, Andreas Salas, Nafis, Andrew Spence,
 5 Joe Tate, Maria Tavares, Bryant White,
 6 David Williams, and Zapata.
 7 Q. How do you know that each of those
 8 individuals reported to Mr. Hussain?
 9 A. Because I see them every day.
 10 Q. How do you know that they reported to
 11 Mr. Hussain?
 12 MR. ANDREWS: Objection.
 13 A. When they come to work, I see their
 14 faces. I see them pick up bags, and we talk
 15 every day.
 16 Q. From November 2008 until June 2010, what
 17 hours did you perform deliveries for
 18 The Fresh Diet?
 19 A. 5:00 p.m. to 7:00 a.m.
 20 Q. Then what about from June 2010 until
 21 April 2012?
 22 A. It's about the same.
 23 Q. You previously testified that you didn't
 24 report to work until 8:00 p.m., correct,
 25 starting in June 2010?

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1 K. Chow
 2 26, it says, "I have reviewed the list of
 3 drivers and/or food delivery employees attached
 4 as Exhibit A, which I understand was produced
 5 by the defendants in this action on or about
 6 December 21, 2012. I recognize the majority of
 7 persons listed."
 8 Do you see that?
 9 A. Yes.
 10 Q. Who do you recognize?
 11 A. Marquis Acklin, Julian Alvarez, Vinh Au,
 12 Leonard Bloomfield, Gladys Bonilla,
 13 Rafael Brito, Jai Britt, William Brown, myself,
 14 Syed Chowdhury, Boyce Coleman, Irving Collado,
 15 Juan Correa, Owen Dacres, Wilton Dardaine,
 16 Harris Deandre, Denny DeLarosa. Let me see.
 17 Is there more on the back? Christopher Folkes,
 18 Anthony Freeman, Daniel Gorin, Errol Graham,
 19 Yajaira Guerrero, Juany Guzman, Rohan Heaven,
 20 Fernando Hernandez, Syed Hussain,
 21 Cecilia Jackson, Teresa Jackson,
 22 Emanuel Justiniano, Eugene Kimble,
 23 Bengaly Konate, Michael Lattimore,
 24 Alexander Lau, Li And Lyn Inc,
 25 Martina, Jr. Evaristo, Nazrul, Islam,

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1 K. Chow
 2 A. Yes. I got the schedule subject to
 3 mandatory changes (sic).
 4 Q. You didn't perform deliveries from
 5 5:00 p.m. to 7:00 a.m. from June 2010 to April
 6 2012?
 7 A. No. No.
 8 Q. You did not, correct?
 9 A. No.
 10 Q. When did you perform deliveries from
 11 June 2010 until April 2012?
 12 A. I say 8:00 p.m.
 13 Q. Until?
 14 A. Until 7:00 a.m.
 15 Q. Did you ever take breaks during the
 16 deliveries?
 17 A. Most of the time, no.
 18 Q. You would drive straight from customer
 19 to customer?
 20 A. Yes.
 21 Q. Would you eat?
 22 A. I would stop by and eat.
 23 Q. You would take breaks?
 24 MR. ANDREWS: Objection.
 25 A. Yeah.

[39] (Pages 150 to 153)

[Page 154]

1 K. Chow
 2 MR. POLLACK: What's the basis
 3 for the objection?
 4 MR. ANDREWS: Mischaracterizes
 5 his testimony.
 6 Q. You would take breaks, correct?
 7 A. Yes.
 8 Q. To do what?
 9 A. Go to bathroom, order some snacks.
 10 Q. Would you stop at a fast food
 11 restaurant?
 12 A. Yes.
 13 Q. Would you stop at a 711?
 14 A. Yes.
 15 Q. Would you stop for gas?
 16 A. Yes.
 17 Q. You did this between 8:00 p.m. and
 18 7:00 a.m.?
 19 A. Yes.
 20 Q. If you ever took a break, did you report
 21 to Syed that you were going to take a break?
 22 A. No.
 23 Q. Were you ever reimbursed for any meals
 24 that you ate during the time you were
 25 performing deliveries?

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1 K. Chow
 2 A. No reimbursement.
 3 Q. No reimbursement for anything?
 4 MR. ANDREWS: Objection.
 5 A. No. No gas. No reimbursement for gas.
 6 No reimbursement for meals. No reimbursement
 7 for parking and moving violation tickets.
 8 Q. What about tolls?
 9 A. Tolls we do get reimbursed every two
 10 weeks.
 11 Q. But nothing else?
 12 A. Nothing else.
 13 Q. How often would you take breaks during
 14 the deliveries?
 15 A. It varied. Sometime one breaks, two
 16 breaks.
 17 Q. Did you ever take three breaks?
 18 A. No.
 19 Q. Did you have any repairs to your car
 20 between November 2008 and April 2012?
 21 A. Yes.
 22 Q. You paid for those repairs yourself?
 23 A. Yes.
 24 Q. Did you ever seek reimbursement for
 25 those repairs?

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1 K. Chow
 2 A. That, I do not have a document for that.
 3 Q. Did you ever seek reimbursement for
 4 those repairs?
 5 A. No.
 6 Q. Did you pay for maintenance of your car
 7 between November 2008 and April 2012?
 8 A. Yes.
 9 Q. Were you ever reimbursed for any
 10 maintenance to your car?
 11 A. No.
 12 Q. Did you ever do anything, any personal
 13 tasks, during the time you were performing
 14 deliveries?
 15 A. No, just business, just deliveries.
 16 Q. Did you ever go into a Stop & Shop?
 17 MR. ANDREWS: Objection.
 18 A. Once in a while.
 19 Q. How long would you be in a Stop & Shop?
 20 MR. ANDREWS: Objection.
 21 A. About like five minutes.
 22 Q. What would you do?
 23 MR. ANDREWS: Objection.
 24 A. Grab something to eat.
 25 Q. Did you ever buy any other groceries

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1 K. Chow
 2 while you were there?
 3 A. Water.
 4 (Whereupon, Receipts were marked
 5 as Defendant's Exhibit 30, for
 6 identification, as of this date.)
 7 Q. I'm now going to show you what's been
 8 marked for identification as Defendant's
 9 Exhibit 30 (handing).
 10 MR. POLLACK: It's been produced
 11 by Plaintiffs, Bate stamp number
 12 FD004266 to 004462.
 13 Q. I'm going to ask if you've seen those
 14 documents before today.
 15 A. Yeah, I seen it before. I have it in my
 16 possession, and I gave it -- yes.
 17 Q. What are those documents?
 18 A. These are for food and gas.
 19 Q. You didn't obtain reimbursement for food
 20 or gas, correct?
 21 A. No reimbursement for both.
 22 Q. You kept all these receipts?
 23 A. Yes.
 24 Q. Is there a reason you kept the receipts?
 25 A. A reason?

[40] (Pages 154 to 157)

[Page 158]

1 K. Chow
 2 Q. Yes.
 3 A. Oh, tax purpose.
 4 Q. What tax purpose?
 5 MR. ANDREWS: Objection.
 6 A. To claim deductions on those and any
 7 possible lawsuit.
 8 Q. When did you think there may be a
 9 lawsuit?
 10 A. After I got fired the last day of April
 11 of 2012.
 12 Q. On FD004266, the first page, take an
 13 example of the 711 receipt.
 14 A. Okay.
 15 Q. See that it's dated November 2009
 16 (indicating)?
 17 A. Right.
 18 Q. Were you anticipating a lawsuit in
 19 November 2009?
 20 A. No.
 21 MR. ANDREWS: Objection.
 22 Q. What was the primary reason you were
 23 keeping these receipts?
 24 MR. ANDREWS: Objection.
 25 A. I said for tax purposes.

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1 K. Chow
 2 Q. What tax purposes?
 3 A. To file every year your yearly 1040.
 4 Q. Would you claim certain deductions on
 5 your 1040?
 6 A. Yes.
 7 Q. Were those for expenses that you
 8 incurred?
 9 A. Yes.
 10 Q. Did you take any vacations between
 11 November 2008 and April 2012?
 12 A. I took a week in May of 2009.
 13 Q. Is that it?
 14 A. And 2000 -- 2011, October.
 15 Q. Where did you go in May 2009?
 16 A. I went on a cruise for a week.
 17 Q. Where?
 18 A. Where? To the Caribbean.
 19 Q. Was that through Cruise Planners?
 20 MR. ANDREWS: Objection.
 21 A. That was through Cruise Planners.
 22 Q. Was it free?
 23 A. No. I had to pay.
 24 Q. What'd you say, May 2011?
 25 A. No, October 2011.

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1 K. Chow
 2 Q. Where'd you go in October 2011?
 3 A. I went to Bermuda.
 4 Q. For how long?
 5 A. For a week.
 6 Q. Any others?
 7 A. That's it.
 8 Q. Were you sick at any time between
 9 November 2008 and April 2012?
 10 A. On some occasion, I may call in, my car
 11 breaks down, unable to come to work with a good
 12 use car to do deliveries.
 13 Q. Did you ever ask anyone else to perform
 14 deliveries for you?
 15 A. No.
 16 Q. What happened in April 2012 with
 17 The Fresh Diet?
 18 MR. ANDREWS: Objection.
 19 A. I got terminated.
 20 Q. How?
 21 A. For fighting in a facility.
 22 Q. What facility?
 23 A. The Fresh Diet facility at 588 Baltic
 24 Street.
 25 Q. Who were you fighting with?

[Page 161]

1 K. Chow
 2 MR. ANDREWS: Objection.
 3 A. With Nafis.
 4 Q. Physical?
 5 A. Yes.
 6 Q. What happened?
 7 A. I belly bopped him.
 8 Q. You what?
 9 A. I belly bopped him.
 10 Q. Who terminated you?
 11 A. Mr. Hussain.
 12 Q. What'd he say?
 13 A. Over the phone, he told me you're done.
 14 He told me whatever keys and passes you have,
 15 leave in the mailbox and just give me your
 16 payroll on Thursday.
 17 Q. Did you leave the keys and passes?
 18 A. I came back at the end of the night
 19 after I finished my route for that night. I
 20 had left the keys, everything in the mailbox.
 21 Q. Did you keep the magnets?
 22 A. Magnets? Yeah, I have my magnets.
 23 Q. You didn't return those?
 24 A. Company never say anything about
 25 returning magnets.

[41] (Pages 158 to 161)

[Page 162]

1 K. Chow
 2 Q. You didn't return the shirt?
 3 A. I'm sorry?
 4 Q. Did you return the shirt?
 5 A. Company --
 6 Q. You showed a shirt.
 7 A. They never say anything about returning
 shirt.
 8 Q. What about the bag?
 9 A. The bag? Nothing. We just -- only we
 come back at the end of the night. We just
 drop off the bags that we have.
 10 Q. You understand that you were treated as
 11 an independent contractor --
 12 MR. ANDREWS: Objection.
 13 Q. -- by Late Night, correct?
 14 MR. ANDREWS: Objection.
 15 Objection.
 16 A. That, I do not know, but I know I get a
 17 1099.
 18 (Whereupon, 2010 1099 was marked
 19 as Defendant's Exhibit 31, for
 20 identification, as of this date.)
 21 (Whereupon, 2011 1099 was marked
 22 as Defendant's Exhibit 32, for
 23

[Page 163]

1 K. Chow
 2 identification, as of this date.)
 3 (Whereupon, 2012 1099 was marked
 4 as Defendant's Exhibit 33, for
 5 identification, as of this date.)
 6 (Whereupon, a recess was taken
 7 at this time.)
 8 Q. Now I'm going to show you what's been
 9 marked as Defendant's Exhibits 31, 32, and 33
 10 (handing).
 11 With regards to Defendant's Exhibit 31,
 12 I'm going to ask if you've seen that document
 13 before today.
 14 A. Yeah. I have it in my possession.
 15 Q. What do you understand that document to
 16 be?
 17 A. That's a 1099.
 18 Q. Does that reflect compensation you
 19 received from Late Night in 2010?
 20 MR. ANDREWS: Objection.
 21 A. Yes.
 22 Q. Did you receive \$63,885 in 2010 from
 23 Late Night?
 24 A. Yes.
 25 Q. Looking at Defendant's 32, is that a

[Page 164]

1 K. Chow
 2 copy of your 2011 1099?
 3 A. Yes.
 4 Q. Does that accurately reflect \$64,390 in
 5 compensation received by Late Night for 2011?
 6 MR. ANDREWS: Objection.
 7 A. Yes.
 8 Q. Looking at Defendant's Exhibit 33, is
 9 that a copy of a 1099 received by Late Night
 10 for 2012?
 11 A. Correct.
 12 Q. Does that accurately reflect \$25,548 in
 13 compensation received by Late Night for 2012?
 14 MR. ANDREWS: Objection.
 15 A. Yes.
 16 (Whereupon, 1099 forms were
 17 marked as Defendant's Exhibit 34, for
 18 identification, as of this date.)
 19 Q. I'm now showing you what's been marked
 20 for identification as Defendant's Exhibit 34,
 21 and I'm going to ask you if you've seen these
 22 documents before today (handing).
 23 A. This one, I've seen. It's all I have in
 24 my possession (indicating).
 25 Q. You're referring to 2009, Bate stamp

[Page 165]

1 K. Chow
 2 FD000390?
 3 A. Yes.
 4 Q. What about the second page marked
 5 FD000405?
 6 A. This is correct.
 7 Q. When you say "this is correct," what do
 8 you mean?
 9 A. Nothing. I said this is the right
 10 compensation (indicating).
 11 Q. \$64,390?
 12 A. Yes.
 13 Q. Looking at FD000406, do you recognize
 14 that document?
 15 A. Yes.
 16 Q. Does that reflect the right compensation
 17 for 2010?
 18 A. Yes.
 19 Q. Did you file a tax return in 2009?
 20 A. I just file recently.
 21 Q. Did you file a tax return in 2009?
 22 A. I file -- yes.
 23 Q. Did you file a tax return in 2010?
 24 A. No.
 25 Q. Did you file a tax return in 2011?

[42] (Pages 162 to 165)

[Page 166]

1 K. Chow
 2 A. No.
 3 Q. Did you file a tax return in 2012?
 4 A. No.
 5 Q. I'm going to ask for a copy of the 2009
 6 tax return that you filed.
 7 You previously testified that you had
 8 kept certain receipts, such as those marked on
 9 Defendant's Exhibit 30, to claim on a 1040; is
 10 that correct?
 11 MR. ANDREWS: Objection.
 12 A. Yes.
 13 Q. What do you mean by that?
 14 A. Any deduction, like gas, fuel, on the
 15 1040.
 16 Q. But you never claimed those deductions?
 17 A. I claim them on 2009.
 18 Q. You did not in 2010?
 19 A. No.
 20 Q. Or 2011?
 21 A. No.
 22 Q. Or 2012?
 23 A. No.
 24 Q. You didn't pay taxes from 2010 to 2012?
 25 MR. ANDREWS: Objection.

[Page 167]

1 K. Chow
 2 A. Yes.
 3 Q. You did not, correct?
 4 A. I did not.
 5 Q. Did you receive any type of benefits
 6 from Late Night for the time you worked between
 7 November 2008 until April 2012?
 8 MR. ANDREWS: Objection.
 9 A. What type of benefit?
 10 Q. Insurance, health insurance.
 11 A. Oh, nothing.
 12 Q. Nothing?
 13 A. (Witness shakes head.)
 14 Q. Did you maintain a cell phone the entire
 15 time you worked?
 16 A. Yes.
 17 Q. Was it the same cell phone from
 18 November 2008 through April 2012?
 19 A. Yeah, the same phone number.
 20 Q. What about the same phone?
 21 A. No, different phone.
 22 Q. How many different phones?
 23 A. That, I could recall. About like three
 24 different phones.
 25 Q. When was the last phone you received?

[Page 168]

1 K. Chow
 2 A. The iPhone.
 3 MR. ANDREWS: Objection.
 4 Q. When did you receive that?
 5 MR. ANDREWS: Objection.
 6 A. Approximately around October 2011.
 7 Q. Is that the same phone you have today?
 8 A. Yes.
 9 Q. Who was the cell phone provider in
 10 November 2008?
 11 A. Sprint.
 12 Q. Is it still Sprint?
 13 MR. ANDREWS: Objection.
 14 A. As of April 2012 -- not anymore with
 15 Sprint.
 16 Q. Did you communicate with anyone at
 17 Late Night with your cell phone?
 18 A. Yes.
 19 MR. ANDREWS: Objection.
 20 Q. Who?
 21 A. Fernando.
 22 Q. Who else?
 23 A. Naz.
 24 Q. Who else?
 25 A. Alex, Juany, Nafis, Syed's Uncle, the

[Page 169]

1 K. Chow
 2 transit guys, Owen, Joe, Bryant, Teresa, David,
 3 Cecilia.
 4 Q. What would you text about?
 5 MR. ANDREWS: Objection.
 6 Q. What would you communicate about?
 7 A. Work. Work, stuff about being dock.
 8 Q. Did you ever text with Syed?
 9 A. Yes, almost every day.
 10 Q. What would you text with Syed about?
 11 A. How much bags we pick up and what kind
 12 of missed deliveries that they have, like
 13 missing bags, no food, keys that being picked
 14 up or drop off, bags that being picked up.
 15 Q. When would you text Syed?
 16 A. Oh, during the route.
 17 Q. If you completed a route, would you text
 18 Syed?
 19 A. Yes.
 20 Q. When would you text him? Would it be
 21 after you returned to the facility or after you
 22 finished your last delivery?
 23 A. Most of the time, your last deliveries.
 24 Q. What would you text?
 25 A. The number of bags I pick up.

[43] (Pages 166 to 169)

[Page 170]

1 K. Chow
2 Q. When you texted him, that was the last
3 delivery you performed for the night?
4 MR. ANDREWS: Objection.
5 A. Yes.
6 (Whereupon, Test messages were
7 marked as Defendant's Exhibit 35, for
8 identification, as of this date.)
9 Q. I'm now showing you what's been marked
10 for identification as Defendant's Exhibit 35
11 (handing).
12 I'm going to ask, before today, if
13 you've seen that document.
14 A. Yes.
15 Q. Yes?
16 A. Yes.
17 Q. What is that?
18 What are those copies of?
19 A. These are text messages I communicate
20 with Mr. Hussain and Mr. Dacres, Owen.
21 Q. Are these your text messages to
22 Mr. Hussain and Mr. Dacres?
23 A. Yes.
24 Q. Looking at that first entry on FD000394,
25 do you see that from October 28, 2011 at 7:32

[Page 171]

1 K. Chow
2 p.m.?
3 A. Yes.
4 Q. Its says, "I will be at the kitchen by
5 9:00."
6 Do you see that?
7 A. Yes.
8 Q. What does that mean?
9 A. I informed Mr. Hussain that I be running
10 late.
11 Q. And that you'll be there at what time?
12 A. By 9:00.
13 Q. 9:00 p.m.?
14 A. Yes.
15 Q. When you say you were running late, why
16 were you running late?
17 MR. ANDREWS: Objection.
18 A. It could be many factors.
19 Q. Like what?
20 A. Making manifest or running a little
21 errand.
22 Q. Were you making manifests in October of
23 2011?
24 A. That, I do not recall.
25 Q. What kind of errand may you have been

[Page 172]

1 K. Chow
2 running that would have caused you to be late?
3 MR. ANDREWS: Objection.
4 A. Grabbing something to eat.
5 Q. Anything else?
6 A. That's all.
7 Q. That next entry, do you see that, for
8 November 14, 2011 at 6:55 p.m.?
9 A. Yes.
10 Q. That says, "I will be at the kitchen by
11 8:15 p.m."
12 A. Yes.
13 Q. Does that mean you will be at the
14 kitchen by 8:15 p.m.?
15 A. Yes.
16 Q. Did you receive a response to that text
17 message?
18 A. Most of these, he never responds.
19 Q. Looking at that next one,
20 November 15, 2011 at 4:43 a.m., do you see
21 that?
22 A. Yes.
23 Q. That says, "59 bags."
24 A. Yes.
25 Q. What does that mean?

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1 K. Chow
2 A. That's empty bags I pick up at that
3 date.
4 Q. Were you done with deliveries at
5 4:43 a.m. on November 15, 2011?
6 MR. ANDREWS: Objection.
7 A. Yes, I finished my last stop at that
8 time.
9 Q. The next entry from November 21, 2011 at
10 10:12 a.m., do you see that entry --
11 A. Yes.
12 Q. -- that text message?
13 A. Uh-huh.
14 Q. It says, "I will be at the kitchen by
15 10:00 p.m. tonight," correct?
16 A. Yes. Yes.
17 Q. Do you know why you were going to be at
18 the kitchen at 10:00 p.m. on November 21, 2011?
19 A. I do not recall.
20 Q. Looking at the next page marked
21 FD000395, do you see the entry for
22 December 8, 2011 at 2:21 p.m.?
23 A. Yes.
24 Q. It says, "I will not be able to attend
25 the meeting tonight."

[Page 174]

1 K. Chow
 2 A. Yes. Yes.
 3 Q. Were you disciplined for not attending
 4 the meeting?
 5 MR. ANDREWS: Objection.
 6 A. Mr. Hussain knows I'm making a manifest
 7 during that time.
 8 Q. How does he know that?
 9 A. Because he gets an e-mail.
 10 Q. How did he know that you would be
 11 preparing manifests on December 8, 2011?
 12 A. It would be ongoing because he always
 13 said okay, I have a last minute call, a job
 14 call out. He tell me to go split the route up.
 15 Q. The next entry is from December 9, 2011
 16 at 6:38 p.m.
 17 Do you see that one?
 18 A. Yes.
 19 Q. It says, "I will be in the kitchen by
 20 9:00."
 21 A. Yes.
 22 Q. Is that 9:00 p.m.?
 23 A. 9:00 p.m., correct.
 24 Q. The next entry for December 11, 2011 at
 25 7:04 p.m., do you see that entry?

[Page 175]

1 K. Chow
 2 A. Yes.
 3 Q. It also says, "I will be at the kitchen
 4 by 9:00."
 5 A. Yes.
 6 Q. Does that mean 9:00 p.m.?
 7 A. Yes.
 8 Q. Looking at the next one,
 9 December 14, 2011, 5:46 p.m., do you see that?
 10 A. Yes.
 11 Q. What do you mean by "I will be at 6:15"?
 12 A. I would be at the meeting.
 13 Q. Looking at the next entry, which goes,
 14 it looks like, from FD000395 to 000396, on
 15 December 18, 2011 at 7:43 p.m., do you see the
 16 text underneath that?
 17 A. Yes.
 18 Q. It says, "I will be at the kitchen by
 19 10:00."
 20 A. Yes.
 21 Q. That meant 10:00 p.m.?
 22 A. Correct.
 23 Q. Looking at the next page, FD000397, do
 24 you see the entry for January 13, 2012 at
 25 7:45 p.m.?

[Page 176]

1 K. Chow
 2 A. Yes.
 3 Q. It says, "I'll be at the kitchen by
 4 9:00."
 5 A. Yes.
 6 Q. That meant 9:00 p.m.?
 7 A. Yes.
 8 Q. For January 20, 2012 at 8:02 p.m., do
 9 you see that one?
 10 A. Yes.
 11 Q. "I will be at the kitchen by 9:30."
 12 A. Yes.
 13 Q. 9:30 p.m.?
 14 A. Yes.
 15 (Whereupon, Text messages were
 16 marked as Defendant's Exhibit 36, for
 17 identification, as of this date.)
 18 Q. I'm now showing you what's been marked
 19 for identification as Defendant's Exhibit 36,
 20 and I'm going to ask if you've seen those
 21 documents before today (handing).
 22 MR. ANDREWS: You've looked at
 23 it?
 24 THE WITNESS: Yeah, I've looked
 25 it at.

[Page 177]

1 K. Chow
 2 MR. ANDREWS: And your answer's
 3 yes?
 4 THE WITNESS: Yeah.
 5 Q. Are these similar text messages to those
 6 that were marked as Defendant's Exhibit 35?
 7 MR. ANDREWS: Objection.
 8 A. Different.
 9 Q. Are these text messages from you?
 10 A. Yes.
 11 Q. Who are they to?
 12 A. Mr. Hussain and Mr. Dacres.
 13 Q. Looking at the March 3, 2012 entry from
 14 8:31 p.m. on FD000402, do you see that entry?
 15 A. Yes.
 16 Q. It says, "I will be running late and
 17 will be at the kitchen by midnight."
 18 Do you see that?
 19 A. Yeah.
 20 Q. That meant you would not be at the
 21 kitchen until 12:00 a.m. that night?
 22 A. Correct.
 23 Q. Did you receive a response to that?
 24 A. No, no response.
 25 Q. The following entry from April 3, 2012

[45] (Pages 174 to 177)

[Page 178]

1 K. Chow
 2 at 8:20 p.m., do you see that entry?
 3 A. Yes.
 4 Q. It says, "I will be at the kitchen by
 5 9:30."
 6 A. Yes.
 7 Q. Does that mean 9:30 p.m.?
 8 A. Correct.
 9 Q. Do you know what you were doing on
 10 March 30th until midnight?
 11 MR. ANDREWS: Objection.
 12 A. That, I do not recall.
 13 Q. On March 30, 2012, were you scheduled to
 14 be at the facility at 8:00 p.m.?
 15 A. Yes.
 16 Q. On April 3, 2012, were you scheduled to
 17 be at the facility by 8:00 p.m.?
 18 A. Yes.
 19 Q. Looking at the next page, at FD000403,
 20 turning your attention to the entry for
 21 April 14, 2012 at 8:44 p.m., do you see that?
 22 A. Yes.
 23 Q. Were you scheduled to be at the facility
 24 at 8:00 p.m. that night?
 25 A. Yes.

[Page 179]

1 K. Chow
 2 Q. Is that a text message from you saying
 3 "I'll be at the kitchen by 10:00"?"
 4 A. Yes.
 5 Q. That's 10:00 p.m.?
 6 A. Yes.
 7 Q. The following entry for April 6, 2012 at
 8 7:11 p.m., do you see that entry?
 9 A. Yes.
 10 Q. It says, "I will be in the kitchen by
 11 midnight."
 12 A. Yes.
 13 Q. That's a text from you to Syed?
 14 A. Yes.
 15 (Whereupon, Text messages were
 16 marked as Defendant's Exhibit 37, for
 17 identification, as of this date.)
 18 Q. I'm now showing you what's been marked
 19 for identification as Defendant's Exhibit 37,
 20 and I'm going to ask if you've seen those
 21 documents before today, which are marked
 22 FD000575 through 000581 (handing).
 23 A. Yes.
 24 Q. What are these documents?
 25 A. Text messages to Syed.

[Page 180]

1 K. Chow
 2 Q. Do you see the entry for April 20, 2012
 3 at 10:06 p.m.?
 4 A. Yes.
 5 Q. Were you scheduled to be at the facility
 6 at 8:00 p.m. that night?
 7 A. Yes.
 8 Q. Do you see where it says "I will be at
 9 the kitchen by midnight"?"
 10 A. Yes.
 11 Q. Going down to the entry on
 12 April 21, 2012 at 5:07 a.m., do you see that?
 13 A. Yes.
 14 Q. It says "15 bags, 22 stops," correct?
 15 A. Yes.
 16 Q. What does that mean?
 17 A. That's the number empty cooler bags I
 18 pick up and the number of stop I did for the
 19 night.
 20 Q. Would the deliveries on April 20th have
 21 commenced at or after midnight for your routes
 22 that day?
 23 MR. ANDREWS: Objection.
 24 A. That, I do not know.
 25 Q. It says on April 20, 2012 at 10:06 p.m.

[Page 181]

1 K. Chow
 2 that you will not be there until midnight,
 3 correct?
 4 A. Right.
 5 Q. A route goes from one day into the next,
 6 correct?
 7 A. Yes.
 8 Q. Your route for April 20th would have
 9 ended on April 21st --
 10 A. Correct.
 11 Q. -- is that a fair statement?
 12 A. Yes, that's a fair statement.
 13 Q. At 10:06 p.m., you're texting that you
 14 will not be there until midnight, correct?
 15 A. Correct, yes.
 16 Q. On April 21, 2012 at 5:07 a.m., it
 17 indicates that you had picked up fifteen empty
 18 bags and made twenty-two stops; is that
 19 correct?
 20 A. Yes. It's only one route. It's a very
 21 light night. It's a Friday night for Saturday.
 22 Q. How many hours did you work that day?
 23 A. From that, I would say about five hours.
 24 Q. Looking at the next entry,
 25 April 23, 2012 4:26 a.m., do you see that?

[46] (Pages 178 to 181)

[Page 182]

1 K. Chow
 2 A. Yes.
 3 Q. It says, "NY-H 57 bags, 76 stops."
 4 Do you see that?
 5 A. Yes.
 6 Q. What does that mean?
 7 A. For my own route that day, I finished my
 8 own route fifty-seven bags, seventy-six stops,
 9 but I was given a second route to finish at
 10 that same day.
 11 Q. How do you know that?
 12 A. It says that NY-P will be done by 6:15.
 13 Q. You're referring to the following page,
 14 FD000576?
 15 A. Yes.
 16 Q. NY-P reflects a different route?
 17 A. Yes. I was given a second route at that
 18 day.
 19 Q. Looking at April 23, 2012 at 6:16 a.m.,
 20 it says "NY-P 26 bags, 19 stops," correct?
 21 A. Correct.
 22 Q. Does that mean that the NY-P route was
 23 done by 6:16 a.m.?
 24 A. Correct.
 25 Q. Looking at the following page, FD000577,

[Page 183]

1 K. Chow
 2 do you see the entry for April 24, 2012 at
 3 4:58 a.m.?
 4 A. Correct.
 5 Q. Is that similar to what you just
 6 testified regarding there being two different
 7 routes?
 8 A. Yes.
 9 Q. The entry below that, April 24, 2012 at
 10 6:19 a.m. --
 11 A. Yes.
 12 Q. -- it says that the routes were
 13 completed by 6:19 a.m.?
 14 A. Yes.
 15 Q. Looking at the next page, FD000578, for
 16 April 25, 2012 at 4:50 a.m., it says, "NY-H 60
 17 bags, 70 stops."
 18 Do you see that?
 19 A. Right.
 20 Q. What does that indicate?
 21 A. That's my route. That's when I finished
 22 the last stop. I recorded how many empty bags
 23 I pick up, how many stops I had.
 24 Q. Going to FD000580, do you see the entry
 25 for April 26, 2012 at 4:56 a.m.?

[Page 184]

1 K. Chow
 2 A. Yes.
 3 Q. It says "73 bags" and then "78 stops".
 4 A. Yes.
 5 Q. What does that indicate?
 6 A. Indicate how many bags I picked up and
 7 how many stops I did for my route that night,
 8 NY-H.
 9 Q. The route was completed by 4:56 a.m.?
 10 A. Yes.
 11 MR. ANDREWS: Objection.
 12 Q. Where was the last stop on the NY-H
 13 route?
 14 A. It varies.
 15 Q. It's a different route?
 16 MR. ANDREWS: Objection.
 17 A. Depending on the client and whether or
 18 not what order they have.
 19 Q. Where is the NY-H route?
 20 A. From 72nd up to like 125th.
 21 Q. How far is that from the Brooklyn
 22 facility?
 23 A. That takes another -- depending, takes
 24 another half an hour.
 25 Q. Was the NY-H route your regular route

[Page 185]

1 K. Chow
 2 from June 2010 until April 2012?
 3 A. Yes.
 4 When Syed was on vacation, he gave me
 5 his route. That was previously was
 6 Syed Hussain's regular route.
 7 Q. That was previously his?
 8 A. Yes.
 9 Q. Did you work any other routes besides
 10 the NY-H route?
 11 A. Sure. I worked New Jersey, Long Island
 12 and Brooklyn, Queens, and the other Manhattan
 13 routes as well too.
 14 MR. POLLACK: Let's take a quick
 15 five-minute break.
 16 (Whereupon, a recess was taken
 17 at this time.)
 18 (Whereupon, Complaint against
 19 A-1 International was marked as
 20 Defendant's Exhibit 38, for
 21 identification, as of this date.)
 22 Q. I'm now going to show you what's been
 23 marked for identification as Defendant's
 24 Exhibit 38 (handing).
 25 I'm going to ask if you've seen that

[47] (Pages 182 to 185)

[Page 186]

1 K. Chow
 2 document before today.
 3 A. No.
 4 Q. You previously testified that you're
 5 currently involved in a litigation against
 6 A-1; is that correct?
 7 A. Yeah, that's true.
 8 Q. Do you know what your claims are in that
 9 action?
 10 A. Oh, both FSLA and New York State Labor
 11 Law (sic).
 12 Q. What does that mean?
 13 MR. ANDREWS: Objection.
 14 A. I mean wage-and-hour claims.
 15 Q. What do you believe you're entitled to
 16 against A-1?
 17 A. Reimbursement, the hours that I worked.
 18 Q. Is it similar to the claims you're
 19 making against the defendants in this action?
 20 MR. ANDREWS: Objection.
 21 A. Similar.
 22 Q. When did you perform work for A-1?
 23 A. Middle of June.
 24 MR. ANDREWS: That's this year?
 25 THE WITNESS: No, last year.

[Page 187]

1 K. Chow
 2 Q. How were you paid?
 3 A. They paid based on the distance by miles
 4 depending on the vendor, how much they would
 5 charge to make a delivery one way.
 6 Q. It was not per stop?
 7 A. The only thing they pay flat rate if
 8 you're in the city, like Manhattan.
 9 Q. Where would you make those deliveries?
 10 A. Connecticut, Long Island, Rockland
 11 County, Westchester County, New Jersey, Staten
 12 Island, Brooklyn, Queens, Manhattan, Bronx,
 13 Boston.
 14 Q. Do you remember what hours you worked?
 15 A. That, I do not recall.
 16 (Whereupon, Agreement was marked
 17 as Defendant's Exhibit 39, for
 18 identification, as of this date.)
 19 Q. I'm now showing you what's been marked
 20 for identification as Defendant's Exhibit 39
 21 (handing).
 22 I'm going to ask if you've ever seen
 23 those documents before today.
 24 A. Yes.
 25 Q. What is that document?

[Page 188]

1 K. Chow
 2 A. It's an agreement between SCI and
 3 myself.
 4 Q. Do you know what it's an agreement for?
 5 A. In order to work with them, to work for
 6 A-1.
 7 Q. Were you required to sign that agreement
 8 in order to work for A-1?
 9 A. Yes.
 10 I get a minimum insurance of 300,100
 11 bodily injure limit.
 12 Q. On your insurance?
 13 A. Yes, car insurance, and required to
 14 purchase Workman's Comp. directly from SCI.
 15 Q. What was that?
 16 A. And purchase Workman's Comp. insurance
 17 through SCI.
 18 (Whereupon, Independent
 19 contractor acknowledgment form was
 20 marked as Defendant's Exhibit 40, for
 21 identification, as of this date.)
 22 Q. Looking at, still, Defendant's 39, is
 23 that your signature on the fourth page of the
 24 agreement?
 25 A. Yeah, that's my signature.

[Page 189]

1 K. Chow
 2 Q. Now looking at the exhibit that's been
 3 marked for identification as Defendant's
 4 Exhibit 40, have you seen that document before
 5 today (handing)?
 6 A. Yes.
 7 Q. What is that document?
 8 A. It tell me to initial, to read number
 9 for number, make sure you understand what the
 10 agreement about.
 11 Q. Are those your initials on the document?
 12 A. Yeah, that's my initials.
 13 Q. Did you understand what you were
 14 initialing when you initialed that document?
 15 MR. ANDREWS: Objection.
 16 A. This one here, we get reimbursed for
 17 tolls every week (indicating).
 18 Q. Is that your signature on the document?
 19 A. Yeah, it's my signature.
 20 MR. POLLACK: Subject to the
 21 production of the additional documents
 22 that have been requested today, I have
 23 no further questions.
 24 MR. ANDREWS: If you want to put
 25 down the time that I asked, I have a

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1 K. Chow
 2 couple of questions. We can note that
 3 for the record if you want to bill me
 4 for that time.
 5 EXAMINATION BY
 6 MR. ANDREWS:
 7 Q. Mr. Chow, during the time you worked as
 8 a delivery driver with The Fresh Diet or
 9 Late Night, do you recall speaking to other
 10 drivers about Mr. Syed Hussain?
 11 A. Yes.
 12 Q. How often did you speak to other drivers
 13 about Mr. Hussain?
 14 A. Every day when we report to work and
 15 coming back to work, coming back to the
 16 facility.
 17 Q. Did the other drivers report to
 18 Mr. Hussain?
 19 A. Yes.
 20 Q. How do you know that?
 21 A. I see them every day when I come to
 22 work. They come in early waiting for food to
 23 be packed, or they ready to sort the bags
 24 loaded up and --
 25 Q. Were you done?

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1 K. Chow
 2 the wrong floor.
 3 MR. ANDREWS: I have no further
 4 questions.
 5 CONTINUED EXAMINATION BY
 6 MR. POLLACK:
 7 Q. Getting back to the questions regarding
 8 what Mr. Andrews had just asked you, which
 9 individuals spoke to you about Mr. Hussain?
 10 A. Fernando Hernandez.
 11 Q. When?
 12 A. Almost every day.
 13 Q. On what date did he complain about
 14 cutting his routes?
 15 A. That, I do not recall about it.
 16 Q. On what date did he complain about
 17 stealing \$1?
 18 A. He said that numerous times.

19 (Continued on the next page
 20 to accommodate the jurat.)

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1 K. Chow
 2 A. Yeah.
 3 Q. Do you recall any of the other drivers
 4 ever complaining to you about Mr. Hussain?
 5 A. Yes.
 6 Q. Can you describe what types of
 7 complaints other drivers made to you about
 8 Mr. Hussain?
 9 A. Stealing a dollar.
 10 Q. Can you be more specific?
 11 A. Mr. Hernandez would say that he knows
 12 that most people that do city routes get paid
 13 \$4, how come he's getting paid only \$3.
 14 Q. Do you recall anyone else complaining to
 15 you about Mr. Hussain?
 16 A. Yeah, Mr. Juany Guzman.
 17 Q. Do you recall what he complained about?
 18 A. Pay.
 19 Q. Do you recall anyone complaining about
 20 Mr. Hussain cutting their routes?
 21 A. Yes, Mr. Hernandez.
 22 Q. Do you recall what that complaint was?
 23 A. Mr. Hernandez -- originally, Mr. Hussain
 24 told him that he be messing up his route too
 25 often, missing -- miss deliveries, deliver to

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1 K. Chow
 2 Q. Do you recall the latest time that he
 3 said it?
 4 A. No.

5 MR. POLLACK: I have no
 6 questions.
 7 (Time Noted: 3:13 p.m.)

10 KENNETH CHOW

11
 12 Subscribed and sworn to before me
 13 this ____ day of _____, 2013.

14
 15 Notary Public

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1
2 C E R T I F I C A T E
3
4 I, MELISSA KAHANE, hereby certify that
5 the Examination Before Trial of KENNETH CHOW
6 was held before me on the 24th day of
7 September, 2013; that said witness was duly
8 sworn before the commencement of his testimony;
9 that the testimony was taken stenographically
10 by myself and then transcribed by myself; that
11 the party was represented by counsel as appears
12 herein;
13 That the within transcript is a true
14 record of the Examination Before Trial of said
15 witness;
16 That I am not connected by blood or
17 marriage with any of the parties; that I am not
18 interested directly or indirectly in the
19 outcome of this matter; that I am not in the
20 employ of any of the counsel.
21 IN WITNESS WHEREOF, I have hereunto set
22 my hand this 24th day of September, 2013.
23
24
25 MELISSA KAHANE

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1	ERRATA SHEET
2	PAGE/LINE
3	CORRECTION
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5	_____
6	_____
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